TAX EXEMPTION OF CHURCH PROPERTY

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One of the most pervasive and firmly established anomalies in American law is the permissibility of subsidization of religious institutions through tax exemption in a legal order constitutionally committed to separation of church and state.[1] Despite occasional doubts which have been voiced,[2] and in the teeth of judicial acknowledgments that such exemptions are indeed a substantial form of economic assistance,[3] there seems to be no ground for believing that an assault upon first amendment grounds would succeed today or in the foreseeable future.[4]

Understanding of the modern law of tax exemptions of church property begins with the constitutional law of the several states.[5] Such

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[1] See, generally, JOHNSON AND YOST, SEPARATION OF CHURCH AND STATE IN THE UNITED STATES (1948); PFEFFER, CHURCH, STATE, AND FREEDOM (1953); Hudspeth, *Separation of Church and State in America,* 33 TEXAS L. REV. 1035 (1955); Konvitz, *Separation of Church and State: The First Freedom,* 14 LAW & CONTEMP. PROB. 44 (1949); Sutherland, *Due Process and Disestablishment,* 62 HARV. L. REV. 1306 (1949).

[2] See Orr v. Baker, 4 Ind. 86, 88 (1853); PFEFFER, CHURCH, STATE, AND FREEDOM 189 (1953); Paulsen, *Preferment of Religious Institutions in Tax and Labor Legislation,* 14 LAW & CONTEMP. PROB. 144, 148 (1949); Stimson, *The Exemption of Property From Taxation in the United States,* 18 MINN. L. REV. 411, 422-23 (1934); Note 49 COLUM. L. REV. 968, 992 (1949); Comment, 9 STAN. L. REV. 366, 373 (1957).

[3] *E.g.,* Fellowship of Humanity v. County of Alameda, 153 Cal. App. 2d 673, 693, 315 P.2d 394, 407 (1957). "A tax exemption is, obviously, an indirect subsidy."

[4] See Heisey v. County of Alameda, 352 U.S. 921 (1956); Zorach v. Clauson, 343 U.S. 306 (1952); Lundberg v. County of Alameda, 46 Cal.2d 644, 298 P.2d 1 (1956), *appeal dismissed for want of a substantial federal question sub nom;* Comment, 9 STAN. L. REV. 366 (1957). State court decisions uniformly hold church exemptions not to be violative of state constitutional barriers. Garrett Biblical Institute v. Elmhurst State Bank, 331 Ill. 308, 163 N.E. 1 (1928); Trustees of Griswold College v. State of Iowa, 46 Iowa 275, 26 Am. Rep. 138 (1877).

[5] Constitutional provisions in thirty-three states expressly provide for exemption of church (and other) property.

In fifteen states, the constitutional language is mandatory in form. ALA. CONST. art. IV, § 91; ARK. CONST. art. 16, § 5; KAN. CONST. art. 11, § 1; KY. CONST. § 170; LA. CONST. art. X, § 4; MINN. CONST. art. IX, § 1; N.J. CONST. art. 8, § 1, par. 2; N.M. CONST. art. VIII, § 3; N.Y. CONST. art. XVI, § 1; N.D. CONST. art. XI, § 176; OKLA. CONST. art. X, § 6; S.C. CONST. art. X, § 4; S.D. CONST. art. XI, § 6; UTAH CONST. art. XIII, § 2; VA. CONST. art. XIII, § 183.

In another fifteen states, the church exemption is permissive. ARIZ. CONST. art. 9, § 2; FLA. CONST. art. IX, § 1; GA. CONST. art. VII, § 2-5404; ILL. CONST. art. IX, § 3; IND. CONST. art. 10, § 1; MO. CONST. art. X, § 6; MONT. CONST. art. XII, § 2; NEB. CONST. art. VIII, § 2; NEV. CONST. art. 8, § 2; N.C. CONST. art. 5, § 5; OHIO CONST. art. XII, § 2; PA. CONST. art. IX, § 1; TENN. CONST. art. II, § 28; TEX. CONST. art. VIII, § 2; W.VA. CONST. art. X, § 1.

In Colorado, the constitution declares that church and other types of

exemptions, however, have their historical roots in antiquity.[6] In modern times they appear to be traceable to the general immunity from taxation which colonial and early post-Revolutionary church property enjoyed in the status of "established" public institutions.[7] In relatively recent times, the customary practice has been stabilized in constitutional and statutory form.[8]

The prevalence of church tax exemptions in every American jurisdiction, despite the diversities of historical and cultural experience from which the nation emerged, strongly suggests that history alone does not provide an adequate explanation for the phenomenon. Scholars and critics have repeatedly adverted to the defects in any attempt to develop a theoretical rationale for the church exemption by analogy to other exemptions extended to eleemosynary institutions which, unlike churches, perform quasi-public functions that government would presumably be required to assume in their absence.[9] Direct governmental propogation of sectarian doctrine is, of course, forbidden.[10] The proliferation of tax

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property "shall be exempt from taxation, unless otherwise provided by general law" (COLO. CONST. art. X § 5), thereby incorporating both mandatory and permissive features. In California and Wyoming, some types of church property are mandatorily exempt, but the legislatures are expressly authorized to exempt additional types. CAL. CONST. art. XIII, §§ 1-½ (mandatory), 1c (permissive); WYO. CONST. art. XV, § 12 (both mandatory and permissive).

In the remaining fifteen state constitutions (omitting Alaska and Hawaii), there are no explicit provisions for exemption of church property, although five contain general authorizations for legislative grants of property tax exemption. DEL. CONST. art. VIII, § 1; IDAHO CONST. art. 7, § 5; MICH. CONST. art. X, § 3; WASH. CONST. art. 7, § 2; WIS. CONST. art. VIII, § 1. Even in those states where no express authority to exempt is conferred upon the legislature, statutory exemptions are uniformly sustained as a general exercise of comprehensive legislative power. See, *e.g.*, Trustees of Griswold College v. State, 46 Iowa 275 (1877); Opinion of the Justices, 141 Me. 442, 42 A.2d 47 (1945); Mayor etc. of Baltimore v. Minister and Trustees of Starr Methodist Protestant Church, 106 Md. 281, 67 Atl. 261 (1907).

[6] Instances of favorable tax treatment of the established clergy are reported in Biblical times. See *Genesis* 47:26; *Ezra* 7:24. In the fourth century, Constantine exempted the Christian ministry from "all personal taxes and contributions, which pressed on their fellow citizens with intolerable weight." GIBBON, THE DECLINE AND FALL OF THE ROMAN EMPIRE, 301 (Great Books of the Western World ed., 1952). See PFEFFER, CHURCH, STATE, AND FREEDOM 183 (1953); 3 STOKES, CHURCH AND STATE IN THE UNITED STATES 419 (1950).

[7] ZOLLMANN, AMERICAN CHURCH LAW 328 (1933). See Franklin Street Soc. v. Manchester, 60 N.H. 342 (1880).

[8] See TORPEY, JUDICIAL DOCTRINES OF RELIGIOUS RIGHTS IN AMERICA 171-175 (1948); Note 29 ST. JOHNS L. REV. 121 (1954).

[9] Killough, *Exemptions to Educational, Philanthropic and Religious Organizations,* in TAX POLICY LEAGUE, TAX EXEMPTIONS 23 (1939); PFEFFER, CHURCH, STATE, AND FREEDOM 186-187 (1953); Zollman, *Tax Exemptions of American Church Property,* 14 MICH. L. REV. 646 (1916); Note, 64 HARV. L. REV. 288 (1950).

[10] Zorach v. Clauson, 343 U.S. 306 (1952); Everson v. Board of Educ., 330 U.S. 1 (1947).

benefits to churches thus must be regarded in part, at least, as a manifestation of a political consensus that aid to organized religion, in nondiscriminatory form at least, has a special tendency to enhance (to use John Stuart Mill's phrase) "The first element of good government . . . to promote the virtue and intelligence of the people themselves."[11] In this capacity, the church exemption has weathered the storms of criticism[12] and is today more firmly rooted in American tax policy than ever before.[13]

It is here proposed to survey the present constitutional and statutory law of the United States relating to property tax exemption of church property, and to examine the ways in which legislative policies have been judicially applied to various types of church property. Such a study, it is hoped, may provide some insight into the question of the viability of the church exemption in a period of increasing pressures for additional revenue sources, and by underscoring the interplay of legislative draftsmanship and judicial policy-making may provide a basis for a more rational evaluation of tax exemption policy.

THE HOUSE OF WORSHIP

The most universally granted of all exemptions of church property is that which pertains to the building in which religious services are regularly celebrated. The statutes[14] may be roughly classified into five types.

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[11] MILL, REPRESENTATIVE GOVERNMENT 337 (Great Books of the Western World ed. 1952.)

[12] See PFEFFER, CHURCH, STATE, AND FREEDOM, 185-88 (1953) and references cited; Mowry, *Ought Church Property to be Taxed?* 15 GREEN BAY 414 (1903).

[13] See 3 STOKES, CHURCH AND STATE IN THE UNITED STATES 427 (1950). In the absence of express constitutional or statutory language to the contrary, however, exemptions from taxes do not include special assessments for local benefits. See, *e.g.*, Cedars of Lebanon Hospital v. County of Los Angeles, 35 Cal.2d 729, 221 P.2d 31 (1950); City of Atlanta v. First Presbyterian Church, 86 Ga. 730, 13 S.E. 252 (1891). *Cf.* C.A. Wagner Constr. Co. v. Sioux Falls, 71 S.D. 587, 27 N.W.2d 916 (1947).

[14] For convenience, the term "statute" will be used herein to refer to both statutory and constitutional provisions, and the word "state" to refer to the forty-eight states (omitting Alaska and Hawaii) plus the District of Columbia. In 33 states (*i.e.* those without express constitutional provisions governing exemptions, plus those whose constitutions authorize legislative exemptions, *supra* note 5, as well as in the District of Columbia, the statutes are, of course, controlling; but in 12 out of the 15 states with mandatory constitutional exemptions, statutes have been enacted to implement the exemption. Only in Kentucky, Louisiana and New Mexico are the exemptions framed solely in constitutional language. Although it is generally held that the legislature may impose reasonable conditions precedent to exemption in addition to those set forth in the constitution, see Lutheran Hosp. Soc. of So. Calif. v. County of Los Angeles, 25 Cal.2d 254, 153 P.2d 341 (1944); People v. Anderson, 117 Ill. 50, 7 N.E. 625 (1886), it is beyond the scope of this paper to examine the extent to which statutes may liberalize the conditions of exemption or exempt property in addition to what is exempted or authorized to be

(a) In twelve jurisdictions, exemption is expressly extended to property simply described as "houses of public worship,"[15] "actual places of religious worship,"[16] or "churches, meeting houses, or other regular places of stated worship."[17] Exemptions framed in descriptive terms of this type inevitably pose problems of a definitional nature. (b) The most prevalent statutory test of exemptability is "use," although the type of use required is not always described in identical terms. Thirteen states insist that the property be "used exclusively for religious worship,"[18] while four others, through omission of the adverb "exclusively," suggest a somewhat less strict policy although continuing to predicate exemption upon use for religious worship.[19] In five jurisdictions where exclusivity of use is required, exemption is predicated upon such use for religious "purposes,"[20] thereby intimating a broader exemption policy than would normally be within the connotation of religious "worship." Where exemption, as in these instances, is focused upon "use," the polices, operations, programs and activities of the religious organization seeking exemption necessarily must come under scrutiny. (c) In a handful of jurisdictions mere ownership by a church or religious society is declared to be a sufficient basis for exemption;[21] while (d) in some twelve jurisdictions, dual requirements of both ownership and use are imposed.[22]

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exempted by the constitution. See Annot., 61 A.L.R. 2d 1031 (1958).

[15] FLA. STAT. ANN. § 192.06(4) (1957); ME. REV. STAT. ANN. ch. 91-A, § 10 (II,G) (Supp. 1957); MICH. COMP. LAWS § 211.7, as amended by PUB. ACTS 1958, ACT 190, p. 219; N.H. REV. STAT. ANN. § 72:23(III) (Supp. 1957); ORE. REV. STAT. § 307.140 (1957).

[16] GA. CODE ANN. § 92-201 (Supp. 1958); KY. CONST. § 170; LA. CONST. art. X, § 4; MONT. REV. CODES ANN. § 84-202 (1947); TEX. REV. CIV. STAT. ANN. art. 7150(1) (1951).

[17] PA. STAT. ANN. tit. 72, § 5020-204(a) (1950). *Cf.* WASH. REV. CODE § 84.36.020 (Supp. 1957), "all churches, built and supported by donations, whose seats are free to all."

[18] ALA. CODE tit. 51, § 2 (Supp. 1958); CAL. CONST. art. XIII, § 1-½; COLO. REV. STAT. ANN. § 137-12-3(6) (Supp. 1957); KAN. GEN. STAT. ANN. § 79-201 (First) (1949); MD. ANN. CODE art. 81, § 9(4) (1957); MO. ANN. STAT. § 137.100(6) (1952); N.J. STAT. ANN. § 54:4—3.6 (Supp. 1958); N.D. REV. CODE § 57-0208(7) (1943); OHIO REV. CODE § 5709.07 (1953); S.C. CODE § 16-1522(12) (1952); UTAH CODE ANN. § 59-2-1 (1953); W. VA. CODE ANN. § 678(9) (Supp. 1958); WYO. COMP. STAT. ANN. § 32-102(G) (Supp. 1957).

[19] ARIZ. REV. STAT. ANN. § 42-271(6) (1956); ARK. STAT. ANN. § 84-206 (Supp. 1957); D.C. CODE ANN. § 47-801a(m) (1951). *Cf.* VT. STAT. ANN. tit. 32, § 3802(4) (1959), "sequestered or used for . . . pious or charitable uses."

[20] ILL. ANN. STAT. ch. 120, § 500(2) (Smith-Hurd Supp. 1958); IOWA CODE § 427.1(9) (1958); OKLA. STAT. tit. 68, § 15.2 (Supp. 1957); R.I. GEN. LAWS ANN. § 44-3-3(5) (1956); S.D. CODE § 57.0311(3) (1939).

[21] DEL. CODE ANN. tit. 9, § 8103 (1953); MINN. STAT. ANN. § 272.02 (Supp. 1958); N.M. CONST. art. VIII, § 3.

[22] CONN. GEN. STAT. §§ 12-81(13), 12-88 (1958), "used exclusively for the purpose of carrying out [religious worship]"; IDAHO CODE ANN. § 63-105(2) (Supp. 1957), "used exclusively for and in connection with public worship"; IND.

Where ownership by a religious organization is a basis for exemption, the interpretative problems would seem to revolve mainly around questions of title (and divided ownership), with some attention to whether the owner has the attributes and characteristics of a "religious organization" within the meaning of the statute. (e) In South Carolina, there being no constitutional prohibition upon special tax exemption legislation, a long list of exemptions of named institutions, including some churches, has accumulated over the years through legislative action.[23] Fortunately in most states exemptions must be extended on a completely uniform basis defined in general legislation,[24] thereby avoiding the discriminations inherent in special legislation of this type.

The statutory variations in the requirements for the church exemption are reflected in prolific litigation. Despite frequently reiterated judicial apologetics as to the rule of "strict construction" which attends tax exemption laws,[25] perusal of the decisions creates a definite impression that the explicit statutory language in which the exemption is framed normally has a great deal more to do with the result in contested cases (almost invariably cases in which judicial relief is sought following administrative denial of exemption) than general rubrics. Indeed, reliance upon judicial generalizations, without regard for differences in statutory language, has apparently fostered much litigation which has proven to be as unavailing as it was avoidable. On the other hand, lack of adequate legislative draftsmanship has in some cases encouraged litigation in an effort to obtain favorable interstitial judicial policy-making, especially where the literal statutory conditions prescribed for exemption have been out of harmony with accepted functions and activities of modern religious organizations. As a whole, however, the courts have responsibly adhered to the legislative policy as either explicitly

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ANN. STAT. § 64-201 (Sixth) (1951), "used for religious worship"; MASS. ANN. LAWS ch. 59, § 5 (Eleventh) (Supp. 1958), "appropriated for . . . religious worship or instruction"; MISS. CODE ANN. § 9697(d) (Supp. 1958), "used exclusively for such [religious] society"; NEB. REV. STAT. § 77-202 (1943), "used exclusively for . . . religious . . . purposes"; NEV. REV. STAT. § 361.125 (1957), "used for religious worship"; N.Y. TAX LAW § 4(6a) (Supp. 1958), "used exclusively for carrying out thereupon . . . such [religious] purposes"; N.C. GEN. STAT. § 105-296(3) (1958), "wholly and exclusively used for religious worship"; TENN. CODE ANN. § 67-502 (1955), "occupied . . . exclusively for carrying out thereupon . . . [religious] purposes"; VA. CODE ANN. § 58-12(2) (1949), "wholly and exclusively used for religious worship"; WIS. STAT. § 70.11(4) (1955), "property owned and used exclusively by . . . churches or religious . . . associations."

[23] S.C. CODE § 65-1523 (Supp. 1958). *Cf.* MICH. COMP. LAWS § 458.106 (1948), exempting property of Baptist church corporations.

[24] See 2 COOLEY, TAXATION § 663 (4th ed. 1924); 2 SUTHERLAND, STATUTORY CONSTRUCTION § 2115 (3rd ed., Horack 1943).

[25] *E.g.*, Cedars of Lebanon Hosp. v. County of Los Angeles, 35 Cal.2d 729, 734-35, 221 P.2d 31 (1950). See CRAWFORD, STATUTORY CONSTRUCTION § 258 (1940); 3 SUTHERLAND, STATUTORY CONSTRUCTION § 6409 (3rd ed., Horack 1943).

or implicitly disclosed in the statutory language. A few examples will suffice to illustrate the point.

Where exemption is conferred upon "houses of religious worship," a vacant lot purchased for future erection of a church could not by any reasonable stretch of the judicial imagination be regarded as exempt,[26] although such a lot may qualify for exemption under more broadly worded statutes.[27] Similarly, a retreat house, used at intervals for accommodating laymen seeking spiritual meditation and refreshment, may be fully exempt as property used for "religious purposes,"[28] but (except so far as a chapel or other sanctuary is maintained) be unable to qualify as a "house" or an "actual place" of "religious worship."[29] Statutory language of the latter type, however, is not always more restrictive. Where a concurrence of ownership and use are requisite to exemption, a church meeting house used for worship is not exempt if leased from its owner[30] but might qualify for exemption under other statutes as a house of religious worship,[31] as property used exclusively for public worship,[32]

[26] Burr v. Boston, 208 Mass. 537, 95 N.E. 208 (1910); Boston Soc'y v. Boston, 129 Mass. 178 (1880); Trinity Church v. New York, 10 Howard's Practice 138 (N.Y. 1854); First Baptist Church v. Pittsburgh, 341 Pa. 568, 20 A.2d 209 (1941). *Cf.* Philadelphia v. Overbrook Park Congregation, 171 Pa.Super. 581, 91 A.2d 310 (1952).

[27] See McGlone v. First Baptist Church, 97 Colo. 427, 50 P.2d 547 (1935), "lots with the buildings thereon . . . used solely and exclusively for religious worship"; Lummus v. Miami Beach Congregational Church, 142 Fla. 657, 195 So. 607 (1940), property "held and used exclusively for religious . . . purposes;" Commonwealth v. First Christian Church of Louisville, 169 Ky. 410, 183 S.W. 943 (1916), "places actually used for religious worship"; State v. Second Church of Christ, Scientist, 185 Minn. 242, 240 N.W. 532 (1932), "church property"; *In re* Assessment of Property of Zion Evangelical Lutheran Church, 202 Okla. 174, 211 P.2d 534 (1949), property used for appropriate purposes of church owner. But *cf.* Burbridge v. Smyrna Baptist Church, 212 Ark. 924, 209 S.W.2d 685 (1948), where church had burned down but was not yet rebuilt, unused premises held not exempt as property used exclusively for public worship.

[28] Serra Retreat v. County of Los Angeles, 35 Cal. 2d 755, 221 P.2d 59 (1950); People ex rel Outer Court, O.L.C. v. Miller, 161 Misc. 603, 292 N.Y. Supp. 674 (1936), *aff'd mem.* 256 App. Div. 814, 10 N.Y.S.2d 208 (1939), 280 N.Y. 825, 21 N.E.2d 881 (1939). *Cf.* Franciscan Fathers v. Town of Pittsfield, 97 N.H. 396, 89 A.2d 752 (1952).

[29] Town of Woodstock v. The Retreat, Inc., 125 Conn. 52, 3 A.2d 232 (1938); Laymen's Week-End Retreat League v. Butler, 83 Pa. Super. 1 (1924).

[30] Trustees of St. Paul Methodist Episcopal Church South v. District of Columbia, 212 F.2d 244 (D.C. Cir. 1954); People *ex rel* Unity Congregational Soc'y. v. Mills, 189 Misc. 774, 71 N.Y.S.2d 873 (1947); Norwegian Lutheran Church v. Wooster, 176 Wash. 581, 30 P.2d 381 (1934).

[31] See Jefferson Standards Life Ins. Co. v. Wildwood, 118 Fla. 771, 160 So. 208 (1935). *Cf.* Canada West Securities Corp. v. Winnepeg, 1 W.W.R. 788, 66 D.L.R. 591 (Man. 1922).

[32] First New Jerusalem Soc'y v. Richardson, 10 Ohio N.P. (n.s.) 214, 25 Ohio Dec. 672 (1910). *Cf.* Havens v. Alameda County, 30 Cal. App. 206, 157 Pac. 821 (1916). *Contra,* Commr's. of Cambria Park v. Board of County Comm'rs., 62 Wyo. 446, 174 P.2d 402 (1946).

or as property used for religious purposes.[33] On the other hand, if the governing statute speaks in terms of public worship, limitation of participation in the services to members of a particular religious order may defeat exemption[34] otherwise available in the absence of the word "public."[35]

One of the most exacerbated issues with respect to exemption of houses of worship arises from the prevalence therein of activities not constituting actual worship services. Such problems have generally been treated as calling for a judicial appraisal whether the nonexempt activities are related to the exempt ones with sufficient directness and to such a substantial degree as to come within the spirit, if not the precise letter, of the exemption. Being essentially questions of degree, the lines of distinction are not always doctrinally clear. Use of part of a church building for a caretaker's living quarters for example, has been regarded as incidental and necessary to effective worship, and hence does not destroy exemption based on "exclusive use" for religious worship;[36] but similar provision for residential quarters for the minister or parson, even though used occasionally for religious counselling or ceremonies, has been regarded as primarily a nonreligious use which precludes exemption.[37]

In view of the expansion of the social, educational and other auxiliary functions of churches today, a literal application of the statutory wording would often be clearly unreasonable. In the words of the Ohio Supreme Court,[38]

> There are many activities conducted in church buildings which do not constitute public worship but which are designed to encourage people to use the church for public worship. The use of a room in the church to entertain young children while their parents attend church services is not a use for public worship. The use of the church building for meetings of boy scouts is not a use for public worship. The use of part of the building for the preparation of food for a church supper and the eating of such food are not uses for public worship. Certainly it was not the intention of the people that their

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[33] See Anderson v. Doe, 246 Ala. 398, 20 So. 2d 777 (1945); People *ex rel.* Bracher v. Salvation Army, 305 Ill. 545, 137 N.E. 430 (1922).

[34] See People *ex rel.* Carson v. Muldoon, 306 Ill. 234, 137 N.E. 863 (1922). *Cf.* Sisters of Mercy v. Hookset, 93 N.H. 301, 42 A.2d 222 (1945).

[35] St. Barbara's Roman Catholic Church v. City of New York, 243 App. Div. 371, 277 N.Y.Supp. 538 (2d Dept. 1935).

[36] Shaarai Berocho v. Mayor, etc. of City of New York, 60 N.Y. Super. 479, 18 N.Y.Supp. 792 (1892); *In re* Bond Hill-Roselawn Hebrew School, 151 Ohio St. 70, 84 N.E.2d 270 (1949).

[37] Congregation Gedulath Mordecai v. New York, 135 Misc. 823, 238 N.Y.Supp. 525 (Munic. Ct. 1929); Mussio v. Glander, 149 Ohio St. 423, 79 N.E.2d 233 (1948).

[38] *In re* Bond Hill—Roselawn Hebrew School, 151 Ohio St. 70, 72-73, 84 N.E.2d 270, 272 (1949), per Taft, J.

> words, "used exclusively for public worship," should be so literally construed that any such uses would prevent tax exemption of a church building.

Cases in other jurisdictions under comparable statutory language are in agreement with these views,[39] as are the decisions applying the somewhat more liberal requirement of exclusive use for religious "purposes".[40] Indeed, there appears to be a consensus that, in the absence of express statutory language to the contrary, permissive use, or even a renting out, of a church meeting house for occasional activities such as town meetings or community social gatherings, which historically constituted an important function of early church meeting houses,[41] will not alter the status of the church building from that of an exempt "house of worship"[42] nor mitigate the exclusiveness of its religious use.[43] In earlier days, particularly in New England,

> The church—commonly called the "Meetinghouse"—was customarily used for town meetings, lectures, concerts, temperance meetings, political addresses, and for other like special occasions; and no one ever supposed that such use made the meetinghouse liable to taxation.[44]

Under statutes which require "ownership" by a religious institution, organization or corporation as a condition of exemption, a determination that the owner is in the requisite class is of crucial significance. Thus, ownership by an individual, even though in trust for a church, does not qualify where the statute contemplates ownership by a "religious associ-

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[39] Fellowship of Humanity v. County of Alameda, 153 Cal. App. 2d 673, 315 P.2d 394 (1957), use for civic meetings, political discussions, lectures, social gatherings, dances and dinners; In re Walker, 200 Ill. 566, 66 N.E. 144 (1903), cloakrooms, classrooms, offices and studies.

[40] Syracuse Center of Jehovah's Witnesses v. Syracuse, 163 Misc. 535, 297 N.Y.Supp. 587 (Sup. Ct. 1937), incidental use as home and shelter for missionaries, students and gospel workers; St. Mary's Church v. Tripp, 14 R.I. 307 (1885), incidental use for educational purposes; Methodist Episcopal Church v. Hinton, 92 Tenn. 188, 21 S.W. 321 (1893), sale of religious literature in church. If the religious activities are incidental to a primarily non-religious use, and appear to constitute a subterfuge to avoid taxes, of course the exemption is denied. See People ex rel Autokefalos Orthodox Spiritual Church v. Hallahan, 200 Misc. 221, 105 N.Y.S.2d 882 (Sup. Ct. 1948), *aff'd mem.* 278 App. Div. 947, 105 N.Y.S.2d 980 (2d Dept. 1951).

[41] See ZOLLMANN, AMERICAN CHURCH LAW 345-46 (1933).

[42] First Unitarian Society v. Hartford, 66 Conn. 368, 34 Atl. 89 (1895); St. Paul's Church v. Concord, 75 N.H. 420, 75 Atl. 531 (1910); Chevra Achewa Chesed Anshe Cheval v. Philadelphia, 116 Pa. Super. 101, 176 Atl. 779 (1935); Craig v. First Presbyterian Church, 88 Pa. 42 (1878).

[43] Assessors of Framingham v. First Parish, 329 Mass. 212, 107 N.E.2d 309 (1952). If the nonreligious activities are of a permanent and continuing nature, however, the exemption may be lost. See First Congregational Church of Fort Collins v. Wright, 110 Colo. 135, 131 P.2d 419 (1942).

[44] First Unitarian Society v. Hartford, 66 Conn. 368, 375, 34 Atl. 89, 90 (1895).

ation."[45] It has been said, for example, that a religious society is "an association or body of communicants or a church usually meeting in some stated place for worship or for instruction, or organized for the accomplishment of religious purposes," and a one-man evangelistic corporation does not come within this meaning.[46]

There is general agreement that the church exemption must be granted all qualified recipients on a non-discriminatory basis and without regard for sectarian or denominational differences.[47] The borderline between religion, on the one hand, and philosophy or metaphysics, on the other, however, is uncertain at best.[48] May a philosophical society qualify for exemption as a "religious" organization? If its physical attributes and activities approximate those of a social club, rather than a church, denial of exemption appears to be reasonably in accord with legislative policy.[49] But what of an association of humanists which holds regular meetings characterized by scriptural readings, sermons, meditation and singing designed to promote ethical and spiritual values, but which nonetheless does not espouse, revere, teach the existence of nor worship any Supreme or Divine Being? In two recent decisions from opposite ends of the nation the same answer has been given: belief in or worship of deity is not essential to the status of a religious society.[50] Referring to the constitutional inviolability of religious beliefs, the earlier of the two opinions expressed the view[51] that:

> . . . The only valid test a state may apply in determining the tax exemption . . . is the objective one of whether or not the belief occupies the same place in the lives of its holders that the orthodox beliefs occupy in the lives of believing majorities, and whether a given group that claims the exemption conducts itself the way groups conceded to be religious

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[45] Katzer v. Milwaukee, 104 Wis. 16, 79 N.W. 745 (1899). *Cf.* Commonwealth v. First Christian Church, 169 Ky. 410, 183 S.W. 943 (1916).

[46] Mordecai F. Ham Evangelistic Ass'n. v. Matthews, 300 Ky. 402, 408, 189 S.W.2d 524, 527 (1945).

[47] See, *e.g.*, Fellowship of Humanity v. County of Alameda, 153 Cal. App. 2d 673, 691-92, 315 P.2d 394, 405 (1957), "It is perfectly obvious that any type of statutory exemption that discriminates between types of religious belief—that discriminates on the basis of the content of such belief—would offend both the federal and state constitutional provisions."

[48] See Silving, *The Unknown and the Unknowable in Law*, 35 CALIF. L. REV. 352 (1947).

[49] See *In re* Peace Haven, 175 Misc. 753, 755, 25 N.Y.S.2d 974, 977 (Sup.Ct. 1941), in which the court observed that plaintiff, an association of persons interested in metaphysics, "has no tenets, ritual, dogma, or other characteristics of a religious organization except, possibly, the solicitation and receipt of funds."

[50] Fellowship of Humanity v. County of Alameda, 153 Cal. App. 2d 673, 315 P.2d 394 (1957); Washington Ethical Society v. District of Columbia, 249 F.2d 127 (D.C. Cir. 1957).

[51] Fellowship of Humanity v. County of Alameda, 153 Cal. App. 2d 673, 692, 315 P.2d 394, 406 (1957).

conduct themselves. The content of the belief, under such test, is not a matter of governmental concern.

CHURCH LAND

In most of the statutes exempting church buildings from taxation, express provision is made for also exempting the adjacent land.[52] Disregarding minor verbal differences, the legislative policy enunciated in these statutes usually limits the exemption to land "appurtenant" to the house of worship,[53] land upon which the church "stands" or "is situated,"[54] or adjacent land necessary for proper occupancy, use and enjoyment of the church.[55] In some eleven states,[56] in addition, a maxi-

[52] In addition to the provisions cited, *infra* notes 52-57, many exemption laws which do not explicitly refer to the land surrounding the house of worship are worded broadly enough to exempt such land. See, *e.g.*, ALA. CODE tit. 51, § 2 (Supp. 1958), "all property, real and personal, used exclusively for religious worship"; COLO. REV. STAT. ANN. § 137-12-3(6) (Supp. 1957), *semble;* CONN. GEN. STAT. § 12-81 (1958), *semble;* DEL. CODE ANN. tit. 9, § 8103 (1953), "property . . . owned by . . . any church"; IDAHO CODE ANN. § 63-105(2) (Supp. 1957), *semble;* ILL. ANN. STAT. ch. 120, § 500(2) (Smith-Hurd Supp. 1958), "all property used exclusively for religious purposes"; IOWA CODE § 427.1(9) (1958), "grounds and buildings used . . . for [religious] . . . objects"; MINN. STAT. ANN. § 272.02(5) (Supp. 1958), "churches, church property, and houses of worship"; MISS. CODE ANN. § 9697(d) (Supp. 1958), "all property, real or personal . . . used exclusively . . ."; MO. ANN. STAT. § 137.100(6) (1952), *semble;* NEB. REV. STAT. § 77-202(c) (1943), "property . . . used exclusively for . . . religious . . . purposes"; N.M. CONST. art. VIII, § 3, "all church property"; N.Y. TAX LAW § 4(6a) (Supp. 1958), "real property"; OKLA. STAT. tit. 68, § 1512(7) (Supp. 1957), "all property"; S.D. CODE § 57.0311(3) (1939), "all property"; TENN. CODE ANN. § 67-502(2) (1955), "real estate"; W.VA. CODE ANN. § 678(9) (Supp. 1958), "property, real and personal"; WIS. STAT. § 70.11(4) (1955).

[53] ARIZ. REV. STAT. ANN. § 42-271(6) (1956); KY. CONST. § 170; LA. CONST. art. X, § 4; MD. ANN. CODE art. 81, § 9(4) (1957); N.H. REV. STAT. ANN. § 72:23(III) (Supp. 1957); VT. STAT. ANN. tit. 32, § 3832 (1959). *Cf.* S.C. CODE § 65-1522(12) (1952), "all houses used exclusively for public worship . . . [and] the ground actually occupied by them."

[54] FLA. STAT. ANN. § 192.06 (1957); IND. ANN. STAT. § 64-201 (Sixth) (1951); MICH. COMP. LAWS § 211.7 (Fifth), as amended by PUB. ACTS 1958, ACT 190, p. 219; NEV. REV. STAT. § 361.125 (1957); N.J. STAT. ANN. § 54:4-3.6 (Supp. 1958); N.C. GEN. STAT. § 105-296(3) (1958); N.D. REV. CODE § 57-0208(7) (1943); ORE. REV. STAT. § 307.140(1) (1957); R.I. GEN. LAWS ANN. § 44-3-3(5) (1956); UTAH CODE ANN. § 59-2-1 (1953); WASH. REV. CODE § 84.36.020 (Supp. 1957); WYO. COMP. STAT. ANN. § 32-102(G) (Supp. 1957). *Cf.* KAN. GEN. STAT. ANN. § 79-201 (First) (1949), "buildings used exclusively as places of public worship . . . together with the grounds owned thereby."

[55] ARK. STAT. ANN. § 84.206 (First) (Supp. 1957); CAL. CONST. art. XIII, § 1-½; OHIO REV. CODE § 5709.07 (1953); PA. STAT. ANN. tit. 72, § 5020-204(a) (1950); VA. CODE ANN. § 58-12(2) (1949). *Cf.* D.C. CODE ANN. § 47-801a(r) (1951), "grounds belonging to and reasonably required and actually used. . . ."

[56] ALA. CONST. art. 4, § 91, 1 acre in city, 5 acres in country; IND. ANN. STAT. § 64-201 (Sixth) (1951), 15 acres; IOWA CODE § 427.1(9) (1958), 320 acres; KAN. GEN. STAT. ANN. § 79-201 (First) (1949), 10 acres; KY. CONST. § 170, ½ acre in city, 2 acres in country; N.J. STAT. ANN. § 54:4-3.6 (Supp. 1958),

mum acreage limitation upon the exemption is imposed, ranging from one-half acre in Kentucky[57] to 320 acres in Iowa.[58]

Cases determining claims to exemption of land under statutes of this type appear to be based less upon judicial appraisal of factual circumstances involved than upon the particular language of the applicable statute. For example, in several states where the respective constitutions authorized legislative exemption only of "houses used exclusively for public worship"[59] or "actual places of religious worship,"[60] the courts have upheld statutes which purported to exempt both the church meeting-house and "the grounds attached to such buildings necessary for the proper occupancy, use, and enjoyment" thereof;[61] but, in view of the rather narrow constitutional basis for such an enlarged exemption, have generally taken a parsimonious attitude as to how much property is "necessary" for occupancy and enjoyment.[62] On the other hand, in Kentucky, where the constitution expressly exempts the grounds "attached and used and appurtenant to the house of worship, not exceeding one-half acre,"[63] the evident constitutional largesse has fortified the

5 acres; N.D. REV. CODE § 57-0208(9) (Supp. 1957), 2 acres; R.I. GEN. LAWS ANN. § 44-3-3(5) (1956), 1 acre; S.C. CODE § 65-1522(13) (1952), 2 acres; S.D. CODE § 57.0311(3) (1939), up to 80 acres of agricultural land; WASH. REV. CODE § 84.36.020 (Supp. 1957), 5 acre maximum, but "unoccupied ground" exempted "shall not exceed the equivalent of one hundred-twenty by one hundred-twenty feet."

[57] KY. CONST. § 170.

[58] IOWA CODE § 427.1(9) (1958).

[59] *E.g.*, OHIO CONST. art. XII, § 2.

[60] *E.g.*, PA. CONST. art. IX, § 1; TEX. CONST. art. VIII, § 2.

[61] OHIO REV. CODE § 5709.07 (1953); PA. STAT. ANN. tit. 72, § 5020-204(a) (1950); TEX. REV. CIV. STAT. ANN. art. 7150 (1951). See Gerke v. Purcell, 25 Ohio St. 229 (1874); First Baptist Church v. Pittsburgh, 341 Pa. 568, 20 A.2d 209 (1941); City of Houston v. Cohen, 204 S.W.2d 671 (Tex. Civ. App. 1947).

[62] See Congregational Union v. Zangerle, 138 Ohio St. 246, 34 N.E.2d 201 (1941), lot adjacent to church building, and under different ownership, on which church members were permitted to park their cars and church was permitted to maintain a bulletin board, held "convenient" to use of church but not exempt because not "necessary" thereto; Wynnefield United Presbyterian Church v. Philadelphia, 348 Pa. 252, 35 A.2d 276 (1944), vacant 50 foot lot adjoining church held not necessary for ingress and egress, or for light and air, where 15 foot strip lying between church and lot appeared to be sufficient for the purpose and hence was exempted; First Baptist Church v. Pittsburgh, 341 Pa. 568, 20 A.2d 209 (1941), unused two-thirds of lot adjoining church held not exempt since not "necessary" to occupancy and enjoyment; court points out that lot was located in the rear of the church "at a point where there is the least need for light, air and approach"; Grace Methodist Episcopal Church v. Philadelphia, 41 Pa. County Ct. 703 (1913), *semble*. *But cf.* City of Houston v. Cohen, 204 S.W.2d 671 (Tex. Civ. App. 1947), to be exempt, lands attached to church need not be absolutely necessary to use of meeting house, but only reasonably necessary for light, air, access and ornamentation.

[63] KY. CONST. § 170.

interpretative liberality of the judiciary.[64] Similarly, in North Carolina where exemption was expressly granted not only to the land on which a church building was "situated" but also to "additional adjacent land reasonably necessary for the convenient use of any such building,"[65] the apparent intent of the latter phrase, as contrasted with the former, to expand the scope of exempted land beyond the immediate curtilage of the church supported exemption of a lot several blocks distant from the over-crowded church building, which was intended for future construction of a new edifice but was presently used as an open air annex for Sunday School classes and other overflow services.[66] In still other jurisdictions, the requirement that the adjacent land be "necessary" to convenient use and occupation of the church has been invoked to deny exemption in order to promote collateral policies, such as provisions for sanitary water and sewage facilities in churches,[67] or maintenance of equal competitive conditions for landowners engaged in revenue producing activities.[68] Conversely, the elimination of traffic congestion and overcrowded street parking conditions has justified decisions exempting church parking lots as "necessary" to use of the church building for worship.[69]

In a minority of states, as indicated above, the exemption laws contain no express provisions as to the tax status of the land on which the church building stands.[70] One court, faced with this type of statute, found sufficient indications of legislative intent, bolstered by the *expressio unius* rule, to conclude that exemption of "houses of public worship" did not apply to any land either beneath or adjacent to a church building.[71]

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[64] See City of Louisville v. Werne, 25 Ky. L. Rep. 2196, 80 S.W. 224 (1904), holding lands in rear of church, unused except for two coal sheds and which were within the acreage limit, to be exempt on ground the whole lot was appurtenant to the house of worship and used with it by the congregation.

[65] N.C. GEN. STAT. § 105-296(3) (1958).

[66] Harrison v. Guilford County, 218 N.C. 718, 12 S.E.2d 269 (1940), indicating that in view of the statutory language, "adjacent land" must lie close, but not necessarily be contiguous, to the lot on which the church is situated.

[67] Pulaski County v. First Baptist Church, 86 Ark. 205, 110 S.W. 1034 (1908).

[68] Gibbons v. District of Columbia, 116 U.S. 404 (1886).

[69] Immanuel Presbyterian Church v. Payne, 90 Cal. App. 176, 265 Pac. 547 (1928); Congregation B'nai Yisroel v. Township of Millburn, 35 N.J. Super. 67, 113 A.2d 182 (1955); First Baptist Church v. Pittsburgh, 341 Pa. 568, 20 A.2d 209 (1941). *But cf.* Congregational Union v. Zangerle, 138 Ohio St. 246, 34 N.E.2d 201 (1941). Subsequent to the *Immanuel Presbyterian Church* case, *supra*, the California Code was amended to expressly exempt church parking lots under prescribed conditions. See CAL. REV. & TAX CODE § 206.1. *Cf.* ORE. REV. STAT. § 307.140(2) (1957).

[70] GA. CODE ANN. § 92-201 (Supp. 1958); ME. REV. STAT. ANN. ch. 91-A, § 10(IIA) (Supp. 1957); MASS. ANN. LAWS ch. 59, § 5 (Eleventh) (Supp. 1958); MONT. REV. CODES ANN. § 84-202 (1947); TEX. REV. CIV. STAT. ANN. art. 7150(1) (1951).

[71] Lefevre v. Detroit, 2 Mich. 586 (1853), relying on the fact that the same

In the absence of such negative implications, however, the courts have uniformly agreed that exemption of a church building includes by implication the land on which the building stands together with such adjoining land as is reasonably necessary to the convenient use, occupation and enjoyment thereof.[72]

As seen above, in nearly every jurisdiction the exemption of church land is directly dependent upon its use in conjunction with an exempt church building, whether by express statutory direction or by judicial implication. In either event, the relationship to the building is crucial; and in the absence of statutory language to the contrary[73] a vacant lot, not so related, is quite properly denied exemption despite an admitted bona fide intent to erect a church thereon in the future.[74] By the same token, land on which a church is being constructed but which is not yet in use and hence is not yet exempt as a house of worship cannot qualify.[75] As is typical of all exemptions, however, the statutory language may justify a contrary result, as, for example, where exemption is not predicated upon use[76] or where it is expressly allowed to buildings under construction.[77]

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statute carefully identified adjacent land as exempt in conjunction with other exempted improvements.

[72] Third Congregational Soc'y v. Springfield, 147 Mass. 396, 18 N.E. 68 (1888); Trinity Church v. Boston, 118 Mass. 164 (1875). *Cf.* Gerke v. Purcell, 25 Ohio St. 229 (1874); City of Houston v. Cohen, 204 S.W.2d 671 (Tex. Civ. App. 1947).

[73] *E.g.*, D.C. CODE ANN. § 47-801a(r)(2) (1951), exempting vacant land owned by a church prior to July 1, 1942 and held for enlargement or expansion in the future; IND. ANN. STAT. § 64-201 (Fifth) (1951), *semble.*

[74] Grace Calvary Church v. City and County of Denver, 130 Colo. 290, 274 P.2d 983 (1954); Enaut v. McGuire, 36 La. Ann. 804 (1884); All Saints Parish v. Inhabitants of Brookline, 178 Mass. 404, 59 N.E. 1003 (1901); Enochs v. Jackson, 144 Miss. 360, 109 So. 864 (1926). See Boston Soc'y of Redemptorist Fathers v. City of Boston, 129 Mass. 178 (1880); Parnassus v. Parnassus United Presbyterian Church, 43 Pa. County Ct. 142 (1915). *But cf.* McGlone v. First Baptist Church, 97 Colo. 427, 50 P.2d 547 (1935).

[75] See First Baptist Church v. County of Los Angeles, 113 Cal. App. 2d 392, 248 P.2d 101 (1952); Trinity Reformed Church v. Philadelphia, 23 Pa. D. & C. 343 (1914); Mullen v. Comm'rs of Erie County, 85 Pa. 288 (1877). *Cf.* Good Samaritan Hospital Ass'n v. Glander, 155 Ohio St. 507, 99 N.E.2d 473 (1951). Following the *First Baptist Church* decision, *supra,* the California Constitution was amended to exempt buildings in the course of erection where "the same is intended to be used solely and exclusively for religious worship." CAL. CONST. art. XIII, § 1-½, as amended Nov. 4, 1952.

[76] See Lummus v. Miami Beach Congregational Church, 142 Fla. 657, 195 So. 607 (1940), church building site held exempt as property "held . . . exclusively for religious purposes"; Trinity Church v. Boston, 118 Mass. 164 (1875), church under construction to replace old one destroyed by fire is exempt under statute exempting "houses of religious worship," since appropriation to sacred uses, rather than actual present use or condition for such use, is required for exemption; State v. Second Church of Christ, Scientist, 185 Minn. 242, 240 N.W. 532 (1932), church building site held exempt as "church property," where present use for worship was not required as a condition of exemption.

TANGIBLE PERSONAL PROPERTY OF CHURCHES

Although one authority flatly declares that church personal property devoted to religious uses is everywhere exempt from taxation,[78] the law is by no means that uniform. In some 18 states the statutory exemption is worded broadly enough to embrace church personalty as well as realty,[79] while in at least 3 jurisdictions church personalty shares the benefits of a general exemption of all tangible personal property.[80] The statutory provisions in the remaining states fall roughly into two general categories, (a) statutes which are silent as to exemption of such personalty, making provision solely for exemption of real property,[81] and (b) statutes expressly exempting described classes of tangible personal property, thereby impliedly excluding other forms of such property from the privilege.[82]

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[77] See, *e.g.*, Board of Foreign Missions of Methodist Episcopal Church v. Board of Assessors, 244 N.Y. 42, 154 N.E. 816 (1926).

[78] PFEFFER, CHURCH, STATE, AND FREEDOM 184 (1953).

[79] ALA. CODE tit. 51, § 2 (Supp. 1958), "property, real and personal"; COLO. REV. STAT. ANN. § 137-12-3(6) (Supp. 1957), *semble;* CONN. GEN. STAT. § 12-81 (12) (1958), "personal property"; IDAHO CODE ANN. § 63-105(2) (Supp. 1957), "property"; ILL. ANN. STAT. ch. 120, § 500(2) (Smith-Hurd Supp. 1958); MINN. STAT. ANN. § 272.02(5) (Supp. 1958), "church property"; MISS. CODE ANN. § 9697(d) (Supp. 1958), "property, real or personal"; MO. ANN. STAT. § 137.100 (6) (1952), "property, real and personal"; MONT. REV. CODES ANN. § 84-202 (1947), "property"; NEB. REV. STAT. § 77-202(1c) (1943); N.H. REV. STAT. ANN. § 72:23(III) (Supp. 1957), "real estate and personal property"; N.J. STAT. ANN. § 54:4-3.6 (Supp. 1958), "buildings . . . furniture and personal property"; N.M. CONST. art. VIII, § 3, "all church property"; N.D. REV. CODE § 57-0208 (Supp. (1957), "all real property . . . [and] all personal property"; OKLA. STAT. tit. 68, § 15.2 (Supp. 1957), "all property"; S.D. CODE § 57.0311(3) (1939), "all property"; TENN. CODE ANN. § 67-502(2) (1955), "real estate . . . and the personal property"; VT. STAT. ANN. tit. 32, § 3802(4) (1959), "real and personal estate"; W.VA. CODE ANN. § 678(9) (Supp. 1958), "property"; WIS. STAT. § 70.11(4) (1955), "property."

[80] DEL. CODE ANN. tit. 9, § 8102 (1953); N.Y. TAX LAW § 3; PA. STAT. ANN. tit. 72, § 5020-201 (Supp. 1958).

[81] ARK. STAT. ANN. § 84.206 (First) (Supp. 1957); CAL. CONST. art. XIII, § 1½; D.C. CODE ANN. § 47-801a(m) (1951); GA. CODE ANN. § 92-201 (Supp. 1958); IOWA CODE § 427.1 (1958); KY. CONST. § 170; LA. CONST. art. X, § 4; R.I. GEN. LAWS ANN. § 44-3-3(5) (1956); UTAH CODE ANN. § 59-2-1 (1953); WASH. REV. CODE § 84.36.020 (Supp. 1957); WYO. COMP. STAT. ANN. § 32-102(G) (Supp. 1957).

[82] *E.g.*, ARIZ. REV. STAT. ANN. § 42-271(6), "furniture and equipment"; FLA. STAT. ANN. § 192.06 (1957), "pews or steps and furniture"; IND. ANN. STAT. § 64-201 (Sixth) (1951), "pews and furniture"; KAN. GEN. STAT. ANN. § 79-201 (1949), "furniture and books"; ME. REV. STAT. ANN. ch. 91-A, § 10(II G) (Supp. 1957), "pews and furniture"; MD. ANN. CODE art. 81, § 9 (1957), "furniture"; MASS. ANN. LAWS ch. 59, § 5 (Eleventh) (Supp. 1958), "pews and furniture"; MICH. COMP. LAWS § 211.7, as amended by PUB. ACTS. ACT 190, p. 219, "furniture"; NEV. REV. STAT. § 361.125 (1957), "furniture and equipment"; N.C. GEN. STAT. § 105-297(2) (1958), "furniture and furnishings"; OHIO REV. CODE § 5709.07 (1953), "books and furniture"; ORE. REV. STAT. § 307.140 (1957), "furniture";

Where personal property is expressly exempted, the chief interpretative problems have been analogous to those arising with respect to allegedly exempt realty, as, for example, whether the personal assets are used exclusively for religious purposes.[83] Where specified categories of personalty are declared exempt, occasional decisions adumbrate the boundaries of the statutory classes with respect to various types of personal property.[84] Legal problems under statutes of these types are minimal.

Absent express exempting language, however, the general rule in favor of uniform taxation requires any exemption of church personalty to be supported by implication drawn from the statutory language. Where the statutory language speaks only in terms of exemption of real property, therefore, the obstacle is indeed a formidable one, even apart from the inhibitory influence of the *expressio unius* canon. In denying exemption to religious books and pamphlets stored in an exempt building and used for missionary purposes, under a provision expressly extending exemption to "all buildings, and . . . the real property on which they are situated" used exclusively for religious worship, the California Supreme Court opined[85] that:

> by no stretch of the imagination may the term "building" . . . include the personal property here taxed although it is assumed that it is used for the exercise of religion as well as the building in which it is stored.

The court pointed out, however, that the taxed personalty would presumably be eligible for exemption under a different statutory provision,[86] not in effect at the time of the assessment in question, exempting "property used exclusively for religious . . . purposes," without distinction between realty and personalty.

Apart from the California decision cited, there has been a dearth of reported cases in which efforts have been made to obtain exemption of church tangible personal property in the absence of express ex-

S.C. CODE, § 65-1522(12) (1952) "books and furniture"; TEX. REV. CIV. STAT. ANN. art. 7150(1) (1951), "books and furniture"; VA. CODE ANN. § 58-12(2) (1949), "furniture and furnishings".

[83] See Congregational Sunday School & Pub. Soc. v. Board of Review, 290 Ill. 108, 125 N.E. 7 (1919); Sunday School Bd. of the So. Baptist Convention v. McCue, 179 Kan. 1, 293 P.2d 234 (1956); Assessors v. Lamson, 316 Mass. 166, 55 N.E.2d 215 (1944); Gunter v. Jackson, 130 Miss. 637, 94 So. 844 (1923); Dawn Bible Students Ass'n. v. Borough of East Rutherford, 3 N.J. Super. 71, 65 A.2d 532 (1949).

[84] See State Tax Comm'n v. Whitehall Foundation, Inc., 214 Md. 316, 135 A.2d 298 (1957), animals for experimental purposes held exempt as "equipment"; Appeal Tax Court of Baltimore City v. St. Peter's Academy, 50 Md. 321 (1878), library, furniture and sacramental vessels of church seminary held exempt as "equipment."

[85] Watchtower Bible & Tract Soc'y v. County of Los Angeles, 30 Cal.2d 426, 428, 182 P.2d 178, 180 (1947), *cert. den.* 332 U.S. 811 (1947).

[86] CAL. REV. & TAX. CODE § 214.

empting language. This phenomenon may be attributed to various factors—lack of sufficient financial interest at stake to justify litigation expense, or legal advice as to futility of suit, for example. There is also the possibility that actual administrative practices of taxing officials may make litigation unnecessary. In the *Watchtower* case, the plaintiff religious society urged the court to take judicial notice, as "a matter of common knowledge," that pews, altars and other paraphernalia of religious worship were generally not taxed in California. The court replied, "We have no such knowledge and we are not justified in indulging in such an assumption."[87] This, of course, is not a denial of the truth of the plaintiff's contention.[88] This may well be an area in which actual taxing practices are more revealing than volumes of enacted law. Even where efforts are made to place nonexempt church personalty on the tax rolls, it is probable that assessed values are often fixed at relatively nominal levels in view of the single-purpose use and lack of an easily identifiable market value for certain kinds of implements of worship.

Church Endowment and Intangibles

In view of the prevalence of endowments for religious, charitable and educational purposes, it is somewhat surprising to find that relatively few tax exemption statutes make explicit provision for them. Only eleven states specifically confer exemption upon endowments for church or religious purposes,[89] although in at least eight other states, they are apparently included (although not specifically and perhaps only partially) in broadly phrased statutes exempting endowments, moneys, credits and other investments of "charitable," "benevolent" or "educational" institutions.[90] The terms of these statutes differ in certain minor respects,

[87] Watchtower Bible & Tract Soc'y v. County of Los Angeles, 30 Cal.2d 426, 429, 182 P.2d 178, 180 (1947).

[88] The author's personal experience and observation support the belief that in Los Angeles County, at least, no effort is made by the assessor to tax personalty located within and used as part of the equipment and facilities of exempt church buildings. This practice may be partially justified in that the cost of assessment, equalization, billing and collection would in all likelihood exceed the potential additional tax revenue to be gained, and that exemption of such personalty could easily be obtained by the churches in question merely by satisfying the formal but substantially more onerous requirements attendant on the "welfare" exemption. See CAL. REV. & TAX CODE §§ 214, 254.5.

[89] CONN. GEN. STAT. § 12-81(12) (1958); GA. CODE ANN. § 92-201 (Supp. 1958); IND. ANN. STAT. § 64-201 (Fifth) (1951); KAN. GEN. STAT. ANN. § 79-201 (Fourth) (1949); MASS. ANN. LAWS ch. 59, § 5 (Tenth) (1953); N.J. STAT. ANN. § 54:4-3.7 (1940); N.C. GEN. STAT. § 105-297(4) (1958); OHIO REV. CODE § 5709.04 (1953); R.I. GEN. LAWS ANN. § 44-3-3(7) (1956); TEX. REV. CIV. STAT. ANN. art. 7150(1) (1951); VA. CODE ANN. § 58-12(2) (1949).

[90] ARK. STAT. ANN. § 84.206 (Seventh) (Supp. 1957); "moneys and credits appropriated solely to sustaining and belonging exclusively to . . . institutions [of purely public charity]"; IDAHO CODE ANN. § 63-105(13) (Supp. 1957), "property . . . used exclusively for endowment . . . of schools or educational

but in the main they expressly relieve from taxation only endowments consisting of or invested in assets other than real estate; and in several instances, clearly negate any intent to exempt assets invested in real property.[91]

Even in the absence of explicit language, the courts have construed general statutory exemptions of "endowments" as limited to funds or other personal assets yielding income, thereby excluding real property.[92] Conversely, the courts have refused to permit express exemptions of personal property endowment to extend to real property purchased with the proceeds of sale thereof.[93] In general, of course, the conditions and scope of exemption granted by statutes of the foregoing types depend chiefly upon the language in which the exemption is formulated.[94]

The balance of the states make no explicit provision for exemption of church endowments, and reliance must be placed upon other exemption provisions. In a few instances,[95] a general exemption is granted to all church property in unconditional and comprehensive terms which clearly include endowments of all types. In other states, the eligibility of such invested assets depends upon the particular language of the statutes and, in part, the judicial attitude toward exemptions. Stocks, bonds, notes or other forms of intangible investments for example,

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institutions"; ILL. ANN. STAT. ch. 120, § 500(1) (Smith-Hurd Supp. 1958), *semble;* KY. CONST. § 170, "institutions of purely public charity . . . and . . . their endowments"; N.D. CODE § 57-0208(8) (1943), "moneys and credits appropriated solely to sustaining and belonging exclusively to . . . institutions [of public charity]"; S.C. CODE § 65-1522 (1952), "institutions of learning, with the funds provided for their support"; S.D. CODE § 57.0311(2), "property used exclusively by and for the support of . . . [any educational] institution"; W. VA. CODE ANN. § 678(a) (Supp. 1958), "property . . . held in trust for . . . educational . . . purposes, including annuities, money".

[91] *E.g.,* MASS. ANN LAW: ch. 59, § 5 (Tenth) (1953), "personal property"; TEX. REV. CIV. STAT. ANN. art. 7150 (1951), "endowment funds . . . invested in bonds or mortgages."

[92] See Millsaps College v. City of Jackson, 136 Miss. 795, 101 So. 574 (1924), *aff'd* 275 U.S. 129 (1927); Rosedale Cemetery Ass'n v. Linden Township, 73 N.J.L. 421, 63 Atl. 904 (1906); State v. Krollman, 38 N.J.L. 323 (1876), *aff'd* 38 N.J.L. 574 (1876); Appeal of Wagner Free Institute of Science, 116 Pa. 555, 11 Atl. 402 (1887); Harris v. City of Fort Worth, 142 Tex. 600, 180 S.W.2d 131 (1944). *Cf.* State v. Silverthorn, 52 N.J.L. 73, 19 Atl. 124 (1889), holding a real property mortgage to be exempt as endowment. *Contra,* Louisville v. Werne, 25 Ky. L. Rep. 2196, 80 S.W. 224 (1904).

[93] First Unitarian Church v. Hartford, 66 Conn. 368, 34 Atl. 89 (1895).

[94] Assessors of Boston v. Lamson, 316 Mass. 166, 55 N.E.2d 215, Annot., 154 A.L.R. 886 (1944), holding exemption of "personal property . . . held in trust . . . for religious organizations . . . if the principal or income is used or appropriated for religious . . . purposes" applicable to trust property used to publish Christian Science Monitor and other religious literature.

[95] *E.g.,* MICH. COMP. LAWS § 211.9, as amended by PUB. ACTS 1958, ACT 209, p. 272, "personal property of benevolent, charitable . . . institutions"; MINN. STAT. ANN. § 272.02 (Supp. 1958), "All . . . church property."

would not be exmpt as "land,"[96] but might qualify as "property" used exclusively for religious purposes where all of the income is devoted to such purposes.[97] In Kentucky, endowments for the establishment and maintenance of exempt institutions of charity are themselves exempt as "institutions of purely public charity,"[98] but due to a difference in the language of the church exemption provision, endowments to finance religious worship are not exempt.[99] In some states, statutory provisions expressly deny exemption to otherwise qualified church property if income or revenue is derived therefrom;[100] and in the absence of language relieving endowments from the application of such a non-profit clause, a denial of exemption may obtain even where all of the income or revenue is applied to religious or other exempt purposes.[101]

The absence of express exemption of church endowments, as such, in the statute law of most of the states[102] should not be considered as necessarily implying taxability of such endowments. Many states, although not expressly referring to endowments, confer exemption upon intangible property of religious organizations,[103] while in others, exemption is accorded intangibles either generally[104] or of specified types,[105]

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[96] Inhabitants of Gorham v. Trustees of Ministerial Fund, 109 Me. 22, 82 Atl. 290 (1912).

[97] See Yates v. Board of Review, 312 Ill. 367, 144 N.E. 1 (1924); Central Bank & Trust Co. v. Yancey County, 195 N.C. 678, 143 S.E. 252 (1928); United Brethren v. Forsyth County, 115 N.C. 489, 20 S.E. 626 (1894).

[98] Louisville v. Presbyterian Orphan Home Soc'y, 299 Ky. 566, 186 S.W.2d 194 (1945); Commonwealth v. Parr's Ex'r., 167 Ky. 46, 179 S.W. 1048 (1915); Norton's Ex'rs. v. Louisville, 118 Ky. 836, 82 S.W. 621 (1904); Commonwealth v. Pollitt, 25 Ky.L.Rep. 790, 76 S.W. 412 (1903).

[99] See Commonwealth v. Thomas, 119 Ky. 208, 214, 83 S.W. 572, 574 (1904), in which the court held that an endowment for propagation of primitive Christianity was not exempt as a "place actually used for religious worship," and could not properly be regarded as an "institution of purely public charity" because "if the language 'purely public charity' embraces any part of the property of a sectarian denomination, it embraces it all, and it is entirely useless to specify the exemption of a house of worship. . . ." *Cf.* Corbin Young Men's Christian Ass'n. v. Commonwealth, 181 Ky. 384, 205 S.W. 388 (1918).

[100] *E.g.*, ALA. CODE tit. 51, § 2 (Supp. 1958); OHIO REV. CODE § 5709.07 (1953); S.C. CODE § 65-1522(12) (1952).

[101] See Ministerial Fund v. Gloucester, 19 Pick. 542 (Mass. 1837); Presbyterian Church v. Montgomery County, 3 Grant 245 (Pa. Ct. Com. Pl. 1858).

[102] In some states, there is an express denial of exemption to endowments. *E.g.*, DEL. CODE ANN. tit. 9, § 8103 (1953), no exemption if property is "held by way of investment"; MO. ANN. STAT. § 137.100(6) (1952), "the exemption herein granted shall not include real property . . . held or used as investment even though the income or rentals received therefrom be used wholly for religious, educational or charitable purposes."

[103] *E.g.*, FLA. STAT. ANN. § 199.02(5) (1957); GA. CODE ANN. § 92-130 (Supp. 1958); IND. ANN. STAT. § 64-942 (1951); MICH. COMP. LAWS § 205.133 (Supp. 1956); OHIO REV. CODE § 5709.04 (1953).

[104] *E.g.*, COLO. REV. STAT. ANN. § 138-1-48 (1953); ORE. REV. STAT. § 307.030 (1957); UTAH CODE ANN. § 59-1-1 (1953); WASH. REV. CODE § 84.36.070 (1951).

irrespective of ownership. In still other jurisdictions, where no intangibles exemption obtains, the rate of tax on such property is nominal.[106] Prudent management of endowment assets in the light of local statutory language may thus serve to minimize or avoid altogether the burden of ad valorem tax liability thereon.

LIVING QUARTERS FOR CLERGYMEN AND CHURCH PERSONNEL

In 29 states[107] and the District of Columbia,[108] statutory provision is made for tax exemption of clergymen's living quarters. In some of these statutes, exemption is simply granted to "parsonages" as such, without further qualification.[109] Many of them additionally require both ownership by a church or religious society and actual use as a residence by the officiating minister.[110] Others insist on the element of church ownership *or* residential use, but not both.[111] In some, a maximum valuation is prescribed as the limit of the parsonage exemption.[112] The land occupied by the parsonage is usually, but not always, desig-

[105] *E.g.*, CAL. REV. & TAX. CODE § 212, notes, stocks, bonds, debentures, mortgages, deeds of trust; IDAHO CODE ANN. § 63-105 (Supp. 1957), bank deposits, credits secured by mortgages or trust deeds; NEV. REV. STAT. § 361.235 (1957), corporate stock exempt to extent corporation is taxed on its property or capital; WYO. COMP. STAT. ANN. § 33-112, mortgages, § 44-125, corporate shares.

[106] *E.g.*, IOWA CODE § 429.2 (1958); 5 mills; KAN. GEN. STAT. ANN. § 79-3109 (1949), 5 mills; KY. REV. STAT. § 132.030 (1959), 1 mill; MO. ANN. STAT. § 146.020 (1952), 4% of yield during previous year; NEB. REV. STAT. §§ 77-702, 77-703 (1958), 2-½ mills on class A intangibles, 4 mills on class B.

[107] See notes 108-10 *infra*.

[108] D.C. CODE ANN. § 47-801a(O) (1951).

[109] FLA. STAT. ANN. § 192.06 (1957); S.C. CODE § 65-1522(12) (1952); WASH. REV. CODE § 84.36.020 (Supp. 1957); W. VA. CODE ANN. § 678(9) (Supp. 1958).

[110] *E.g.*, ARK. STAT. ANN. § 84-207 (1947); COLO. REV. STAT. ANN. § 137-12-4 (Supp. 1957); CONN. GEN. STAT. § 12-81(15) (1958); GA. CODE ANN. § 92-201 (Supp. 1958); IDAHO CODE ANN. § 63-105(2) (Supp. 1957); IND. ANN. STAT. § 64-201 (Sixth) (1951); KAN. GEN. STAT. ANN. § 79-201 (1949); KY. CONST. § 170; LA. CONST. art. X, § 4; ME. REV. STAT. ANN. ch. 91-A, § 10(II G) (Supp. 1957); MICH. COMP. LAWS § 211.7 (Fifth), *as amended by* PUB. ACTS 1958, ACT 190, p. 219; N.Y. TAX LAW § 4(8) (Supp. 1958); N.C. GEN. STAT. § 105.296(3) (1958); N.D. REV. CODE § 57-0208(7) (1943); R.I. GEN. LAWS ANN. § 44-3-3(6) (1956); TEX. REV. CIV. STAT. ANN. art. 7150(1) (1951); VT. STAT. ANN. tit. 32, § 3802(4) (1959); VA. CODE ANN. § 58-12 (1949); WIS. STAT. § 70.11(4) (1955).

[111] MD. ANN. CODE art. 81, § 9(4) (1957), "any parsonage used in connection with" house of worship; MASS. ANN. LAWS ch. 59, § 5 (Supp. 1958), "parsonages so owned"; NEV. REV. STAT. § 361.125 (1957), "parsonages so owned"; N.H. REV. STAT. ANN. § 72:23(III) (Supp. 1957), "parsonages occupied by their pastors"; N.J. STAT. ANN. § 54:4-3.6 (Supp. 1958); "building actually occupied as a parsonage"; WYO. COMP. STAT. ANN. § 32-102(G) (Supp. 1957), "used exclusively for church parsonages."

[112] COLO. REV. STAT. ANN. § 137-12-4 (Supp. 1957), $6,000; ME. REV. STAT. ANN. ch. 91-A, § 10(II G) (Supp. 1957), $6,000; MASS. ANN. LAWS ch. 59, § 5 (Supp. 1958), $10,000; N.J. STAT. ANN. § 54:4-3.6 (Supp. 1958), $5,000; R.I. GEN. LAWS ANN. § 44-3-3(6) (1956), $10,000.

nated by statute as exempt,[113] and such designation presumably includes such additional adjacent land as is reasonably necessary for convenient use and occupation.[114] However, as in the case of houses of worship, the statutes expressly exempting parsonages, save in a few instances,[115] are remarkably devoid of language, clearly indicating whether personal property is included within the exemption.[116]

Express parsonage exemptions have given rise to relatively little litigation. The few reported decisions suggest that recourse to the judiciary has usually been taken either in an effort to secure the benefit of the parsonage exemption for property which, at least *prima facie*, does not appear to be a "parsonage" within the meaning of the statute, or to secure a judicial waiver of some unsatisfied requirement for the exemption. The former category includes unsuccessful efforts to bring within the parsonage exemption property used as a residence for ordained ministers engaged as instructors in a school of Christian education,[117] and property used by ministers and laymen as a temporary sojourn while observing a religious retreat.[118] Cases of the latter type are exemplified by an unavailing effort to secure exemption for a parsonage building owned by a church which was leased for use as a private residence and thus was not "actually occupied . . . by the pastor . . . of a church" as

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113 COLO. REV. STAT. ANN. § 137-12-4 (Supp. 1957); IND. ANN. STAT. § 64-201 (Sixth) (1951); KAN. GEN. STAT. ANN. § 79-201 (1949); KY. CONST. § 170; MD. ANN. CODE art. 81, § 9 (1957); N.H. REV. STAT. ANN. § 72:23 (Supp. 1957); N.Y. TAX LAW § 4(8) (Supp. 1958); N.C. GEN. STAT. § 105-296(3) (1958); N.D. REV. CODE § 57-0208(7) (1943); R.I. GEN. LAWS ANN. § 44-3-3(6) (1956); S.C. CODE § 65-1522(12) (1952); TEX. REV. CIV. STAT. ANN. art. 7150(1) (1951); VA. CODE ANN. § 58-12 (1949); WASH. REV. CODE § 84.36.020 (Supp. 1957); WYO. COMP. STAT. ANN. § 32-102(G) (Supp. 1957).

114 See Annot., 134 A.L.R. 1176 (1941).

115 ME. REV. STAT. ANN. ch. 91-A, § 10(II G) (Supp. 1957), "and personal property not exceeding $6,000 in value"; N.H. REV. STAT. ANN. § 72:23 (Supp. 1957), "the personal property used by them for the purposes for which they are established"; N.J. STAT. ANN. § 54:4-3.6 (Supp. 1958), "furniture and personal property"; N.C. GEN. STAT. § 105-297 (1958), "furniture and furnishings"; TEX. REV. CIV. STAT. ANN. art. 7150(1) (1951), "books and furniture therein"; VT. STAT. ANN. tit. 32, § 3802(4) (1959), "personal property therein"; VA. CODE ANN. § 58-12 (1949), "furniture and furnishings therein"; W.VA. CODE ANN. § 678(9), "household goods and furniture pertaining thereto."

116 In a few instances, language is used which would support an argument in favor of exempting personal property used as part of a parsonage. *E.g.*, GA. CODE ANN. § 92-201 (Supp. 1958), "all property owned by religious groups used only for single family residences. . . ." Conversely, some statutes suggest the parsonage exemption is limited to realty. *E.g.*, ARK. STAT. ANN. § 84-207 (1947), "shall be exempt from all taxes on real property"; IOWA CODE § 427.1 (1958), "grounds and buildings used by . . . religious institutions . . . solely for their appropriate objects."

117 Township of Teaneck v. Lutheran Bible Institute, 20 N.J. 86, 118 A.2d 809 (1955).

118 Woodstock v. The Retreat, Inc., 125 Conn. 52, 3 A.2d 232 (1938).

expressly required by law,[119] and to secure exemption for a parsonage located on a lot separate and distinct from that on which the church was situated, despite statutory language expressly limiting exemption to the church and grounds on which it was built, together with "the parsonage thereon."[120]

Occasional litigation has, on the other hand, resulted from overly strict interpretations of the parsonage exemption by taxing officers. In one case,[121] the exemption had been administratively denied to a church-owned minister's residence because there was no house of worship to which the parsonage was appurtenant, the minister being assigned to preside over several scattered congregations of deaf members holding services in meeting houses owned by other churches. In granting exemption under a statute merely requiring that the exempt buildings be "occupied as a parsonage by the officiating clergymen of any religious corporation," the court defined a parsonage to be simply a residence provided by a church for a minister serving its religious uses, and opined that by "officiating clergyman" was meant "a settled or incumbent pastor or minister . . . installed over . . . [and] serving the needs of a reasonably localized and established congregation."[122] In another decision from the same jurisdiction, denial of exemption was reversed where the building in question housed both a chapel used for worship and an apartment occupied by the minister, for absence of exclusive use as either a place of worship or a parsonage should not result in denial of an exemption clearly intended to be allowed both.[123]

As in the case of other exemptions, the exact language of the parsonage exemption statute is often of controlling significance. For example, a parsonage rented to ordinary tenants clearly should not be entitled to exemption if the statute requires that it be occupied by the minister;[124] but where the statute merely exempts "parsonages" as such, without any further conditions, such renting out does not necessarily preclude exemption.[125] Conversely, a building leased by a church from its owner for use as a parsonage may be exempt where the statutory

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[119] Trustees of St. Paul Methodist Episcopal Church South v. District of Columbia, 212 F.2d 244 (D.C. Cir. 1954). *Accord,* Broadway Christian Church v. Commonwealth, 112 Ky. 448, 66 S.W. 32 (1902).

[120] Foley v. Oberlin Congregational Church, 67 Wash. 280, 121 Pac. 65 (1912). *Accord,* Treasurer of Dauphin County v. St. Stephen's Church, 3 Phila, 189 (Pa. 1858).

[121] St. Matthew's Lutheran Church for the Deaf v. Division of Tax Appeals, 18 N.J. Super. 552, 87 A.2d 732 (App. Div. 1952).

[122] *Id.* at 558, 87 A.2d at 735.

[123] Jersey City v. Beth-El Baptist Church, 18 N.J. Misc. 208, 12 A.2d 152 (Bd. Tax App. 1940). *Cf.* Mussio v. Glander, 149 Ohio St. 423, 79 N.E.2d 233 (1948).

[124] See notes 109 and 110 *supra.*

[125] Protestant Episcopal Church v. Priolean, 63 S.C. 70, 40 S.E. 1026 (1902); State v. Kittle, 87 W.Va. 526, 105 S.E. 775 (1921).

language does not require ownership by the church,[126] but taxation would obtain if the statute contemplated such ownership.[127] Similarly, although the statutory language in some jurisdictions clearly indicates an intention to limit tax relief to only one parsonage per church,[128] in others the statutes contemplate that any number of parsonages eligible in other respects may qualify.[129]

A somewhat delicate interpretative problem, in view of the varieties of internal church organization, arises with respect to whether the parsonage exemption includes residential facilities provided at church expense for religious personnel other than the immediately officiating pastor. In a few jurisdictions the problem is partially disposed of by express statutory language exempting in addition to parsonages other buildings such as "episcopal residences,"[130] "convents,"[131] "monasteries,"[132] "nunneries,"[133] or "property . . . used for housing . . . members of religious orders and communities. . . ."[134] In the absence of applicable language of this type, however, residential facilities provided for church personnel other than the officiating clergyman have usually been held to be taxable.[135]

In some 19 jurisdictions, there is no express statutory exemption for parsonages.[136] In some of these states parsonages nonetheless may qualify for exemption under other statutes exempting church property, where the language used is broad enough to cover residential property occupied by the clergy. For example, in states where exemption is un-

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[126] See Gray v. LaFayette County, 65 Wis. 567, 27 N.W. 311 (1886).

[127] See Katzer v. Milwaukee, 104 Wis. 16, 79 N.W. 745, 80 N.W. 41 (1899).

[128] *E.g.*, D.C. CODE ANN. § 47-801a(O) (1951), "not more than one such pastoral residence shall be so exempt for any one church or congregation"; WASH. REV. CODE § 84.36.020 (Supp. 1957), "a parsonage."

[129] See MASS. ANN. LAWS ch. 59, § 5 (Eleventh) (1953) "each parsonage," Boston v. Old South Soc'y, 314 Mass. 364, 50 N.E.2d 51 (1943).

[130] D.C. CODE ANN. § 47-801a(p) (1951). *Cf.* KAN. GEN. STAT. ANN. § 79-201 (1949), residence of supervisory minister engaged in "the ministrations of such church society" throughout a "district or general church area, within the State of Kansas"; MASS. ANN. LAWS ch. 59, § 5 (Eleventh) (Supp. 1958), residence of district superintendent of Methodist Church; N.J. STAT. ANN. § 54:4-3.35 (Supp. 1958), residence of district superintendent of church.

[131] N.H. REV. STAT. ANN. § 72:23(III) (Supp. 1957).

[132] N.H. REV. STAT. ANN. § 72:23(III) (Supp. 1957).

[133] N.C. GEN. STAT. § 105-296(5) (1958); VA. CODE ANN. § 58-12(5) (Supp. 1958); VT. STAT. ANN. tit. 32, § 3832 (1959), "convent."

[134] WIS. STAT. § 70.11(4) (1955).

[135] Griswold v. Quinn, 97 Kan. 611, 156 Pac. 761 (1916); Worcester Dist. Stewards v. Assessors of Worcester, 321 Mass. 492, 73 N.E.2d 898 (1947). *Cf.* Township of Teaneck v. Lutheran Bible Institute, 20 N.J. 86, 118 A.2d 809 (1955), residence for priests serving as faculty; Sisterhood of Holy Nativity v. Tax Assessors of Newport, 73 R.I. 445, 57 A.2d 184 (1948), convent.

[136] Alabama, Arizona, California, Delaware, Illinois, Iowa, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Mexico, Ohio, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, and Utah.

conditionally granted all church property generally, church-owned parsonages would seem to be clearly included.[137]

The exact terminology of the exemption law, of course, is the most significant factor to be considered. Thus, religious "worship" being demonstrably narrower than religious "purposes,"[138] ministerial residences have usually been denied exemption where exclusive use for religious "worship" is the test,[139] but have often obtained relief, modernly, at least, under a requirement of exclusive use for religious "purposes."[140] Cases construing the latter type legislation, however, have frequently relied heavily upon a factual determination that the living quarters in question were necessary and purely incidental to a primary religious purpose, and hence were provided for reasons "of institutional necessity as contrasted with mere considerations of residential convenience."[141] This approach to the problem regards ordinary residential use as a parsonage as an insufficient basis for exemption.

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[137] See Mayor and Council of Wilmington v. St. Stanislaus Kostka Church, 49 Del. 5, 108 A.2d 581 (1954); Petition of Board of Foreign Missions, 221 Minn. 536, 22 N.W.2d 642 (1946). *But see* Church of Holy Faith v. State Tax Comm'r., 39 N.M. 403, 48 P.2d 777 (1935) residential house and lot rented, where proceeds used for religious purposes, held not exempt as "church property."

[138] See Serra Retreat v. County of Los Angeles, 35 Cal.2d 755, 221 P.2d 59 (1950); People v. Logan Square Presbyterian Church, 249 Ill. 9, 94 N.E. 155 (1911); Trustees of Griswold College v. State of Iowa, 46 Iowa 706 (1877).

[139] St. Mark's Church v. City of Brunswick, 78 Ga. 541, 3 S.E. 561 (1887); Trustees of Methodist Episcopal Church v. Ellis, 38 Ind. 3 (1871); Society of Precious Blood v. Board of Tax Appeals, 149 Ohio St. 62, 77 N.E.2d 459 (1948); Trinity Methodist Episcopal Church v. San Antonio, 201 S.W. 669 (Tex. Civ. App. 1918). See William T. Stead Memorial Center v. Wareham, 299 Mass. 235, 12 N.E.2d 725 (1938).

[140] Serra Retreat v. County of Los Angeles, 35 Cal.2d 755, 221 P.2d 59 (1950); East Orange v. Church of Our Lady, 25 N.J. Misc. 58, 50 A.2d 390 (Div. Tax App. 1946); Syracuse Center of Jehovah's Witnesses v. Syracuse, 163 Misc. 535, 297 N.Y.Supp. 587 (Sup.Ct. 1937); Silver Bay Ass'n. v. Braisted, 80 N.Y.S.2d 548 (App. T. 1920). *Accord,* Trustees of Griswold College v. State of Iowa, 46 Iowa 706 (1877), exemption of "buildings of . . . religious institutions . . . devoted solely to appropriate objects of these institutions"; Bishop's Residence Co. of the Methodist Episcopal Church v. Hudson, 91 Mo. 671, 4 S.W. 435 (1887), parsonage exempt as property used for "charitable" purposes. *Contra,* People *ex rel* Thompson v. First Congregational Church of Oak Park, 232 Ill. 158, 83 N.E. 536 (1907); Vail v. Beach, 10 Kan. 214 (1872).

[141] Serra Retreat v. County of Los Angeles, 35 Cal.2d 755, 759, 221 P.2d 59, 62 (1950) exempting living quarters of priests and maintenance personnel at a religious retreat. *Accord,* People ex rel Society of Free Church of St. Mary The Virgin v. Feitner, 168 N.Y. 494, 497, 61 N.E. 762, 763 (1901), holding that living quarters in church building for a heating engineer and for curates who conducted religious exercises, counseled and advised members and assisted generally, were exempt as property used exclusively for religious purposes where such quarters were factually "necessary and incidental to the work carried on" in the building; In re Bond Hill—Roselawn Hebrew School, 151 Ohio St. 70, 84 N.E.2d 270 (1949), holding church exempt despite incidental use of part of building for caretaker's living quarters, under statute requiring exclusive use for worship.

Whether other institutional purposes served by or in conjunction with such residential use sufficiently bring the structure within the requirements for exemption depends upon judicial evaluation whether the religious aspects appear to be dominant or incidental.[142]

CHURCH CEMETERIES

Tax exemption of cemetery grounds prevails in every jurisdiction; but as with other exemptions, the statutory conditions incorporate substantive differences reflecting diversities of local policy. Although ownership and operation of burial grounds historically has been and in many communities still is, regarded as a traditional and appropriate activity of churches or church-affiliated associations, it is significant that, with but one exception (Connecticut),[143] the exemption statutes uniformly make no mention of, and impose no condition to exemptability in terms of, religious ownership or affiliation.

In nearly every statute, the exempted property is described nominatively as "cemeteries,"[144] "graveyards,"[145] "burying grounds,"[146] or some variant of these words.[147] Seven jurisdictions impose no conditions to exemption except such as are implicit in the particular descriptive appellation employed.[148] Eleven states insist that the property be actually or exclusively "used" or "held" as a burial ground;[149] fifteen attach a condition that the cemetery be not operated or held for profit;[150] and

142 See People *ex rel* Carson v. Muldoon, 306 Ill. 234, 239, 137 N.E. 863, 865 (1922), holding convent not exempt as property used exclusively for religious purposes since "The nuns have no relation, near or remote, to the public, but are completely separated and secluded from the world, and are not in any manner connected with public worship, religious instruction, or public religious observances"; Haven of Grace v. Township of Lakewood, 19 N.J. Misc. 414, 416, 20 A.2d 518, 519 (Bd. Tax App. 1941), denying exemption to combination residence, church office headquarters and rest home. "The religious aspects of the use of this property seem to us to have been merely incidental, not primary."

143 CONN. GEN. STAT. § 12-81(11) (1958).

144 *E.g.*, IDAHO CODE ANN. § 63-105(14) (Supp. 1957).

145 *E.g.*, ARIZONA REV. STAT. ANN. § 42-271(7) (1956).

146 *E.g.*, OHIO REV. CODE § 5709.14 (1953).

147 *E.g.*, KY. CONST. § 170, "places of burial"; ME. REV. STAT. ANN. ch. 91-A, § 10(II G) (Supp. 1957), "tombs and rights of burial"; ORE. REV. STAT. § 307.150 (1957), "burial grounds, tombs and rights of burial"; R.I. GEN. LAWS ANN. § 44-3-3(11) (1956), "lots of land used exclusively for burial grounds".

148 ALA. CODE tit. 51, § 2 (Supp. 1958); ME. REV. STAT. ANN., ch. 91-A, § 10(G) (Supp. 1957); MD. ANN. CODE art. 81, § 9(5) (1957); MASS. ANN. LAWS ch. 59, § 5 (Twelfth) (1953); ORE. REV. STAT. § 307.150 (1957); TENN. CODE ANN. § 67-502(3) (1955); W.VA. CODE ANN. § 678(9) (Supp. 1958).

149 CONN. GEN. STAT. § 12-81(11) (1958); ILL. ANN. STAT. ch. 120, § 500(3) (Smith-Hurd Supp. 1958); IOWA CODE § 427.1(7) (1958); KAN. GEN. STAT. ANN. § 79-201 (Second) (1949); MICH. COMP. LAWS § 211.7 (Sixth) (1948); MISS. CODE ANN. § 9697(a) (Supp. 1958); N.J. STAT. ANN. § 54:4-3.9 (Supp. 1958); N.D. REV. CODE § 57-0208(5) (1943); R.I. GEN. LAWS ANN. § 44-3-3(11) (1956); VT. STAT. ANN. tit. 18, § 5317 (1959); WIS. STAT. § 70.11(13) (1955).

150 COLO. REV. STAT. ANN. § 137-12-3(9) (Supp. 1957); DEL. CODE ANN.

eight impose both a "use" or "holding" and a nonprofit condition to exemption.[151] Three jurisdictions limit the exemption to "public" cemeteries,[152] while in five others the cemetery exemption provisions are sui generis.[153] Although the cemetery exemption statutes of only eight states explicitly exempt funds held for maintenance and care of cemeteries,[154] such endowment funds are often exempt under other provisions exempting intangibles.[155]

It appears to be settled that the property exempted as a "cemetery" or "place of burial" is not restricted to tenanted graves, but embraces paths, landscaping, ornamental plantings, and reasonable areas reserved for future interments.[156]

> The words are to be interpreted according to the known habits and usages of the people, which are to congregate their dead in places set apart for that sacred purpose, encircled by holy influences and subject to regulations for preserving the decency, peace, and sanctity of all their surroundings.[157]

In general, to be eligible for the cemetery exemption, the land in question must be dedicated or set apart for burial purposes in some appropriate manner, and either be or have been used as such or active measures taken to prepare it for such use.[158] Statutory variations, however, play a significant role. Where exclusive "use" for cemetery pur-

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tit. 9, § 8105 (1953); FLA. STAT. ANN. § 192.06 (1957); GA. CODE ANN. § 92-201 (Supp. 1958); IND. ANN. STAT. § 64-201 (Eighth) (1951); KY. CONST. § 170; LA. CONST. art. X, § 4; MO. ANN. STAT. § 137.100(4) (1952); MONT. REV. CODES ANN. § 84-202 (1947); N.M. CONST. art. VIII, § 3; N.C. GEN. STAT. § 105-296(2) (1958); PA. STAT. ANN. tit. 72, § 5020-204(b) (1950); S.C. CODE § 65-1522(14) (1952); UTAH CODE ANN. § 59-2-1 (1953); VA. CODE ANN. § 58-12(3) (1949).

[151] ARIZ. REV. STAT. ANN. § 42-271(7) (1956); ARK. STAT. ANN. § 84.206 (Third) (Supp. 1957); CAL. CONST. art. XIII, § 1b; D.C. CODE § 47-801a(1) (1951); NEB. REV. STAT § 77-202 (1943); N.Y. TAX LAW § 4(6a) (Supp. 1958); OHIO REV. CODE § 5709.14 (1953); TEX. REV. CIV. STAT. ANN. art. 7150(3) (1951).

[152] IDAHO CODE ANN. § 63-105(14) (Supp. 1957); MINN. STAT. ANN. § 272.02 (Supp. 1958); N.H. REV. STAT. ANN. § 72:22 (1955).

[153] OKLA. STAT. tit. 8, § 7 (1951), all property of cemetery corporations properly platted and dedicated; NEV. REV. STAT. § 361.130 (1957), "cemeteries and graveyards set apart and used for and open to the public for the burial of the dead, when no charge is made for burial therein"; S.D. CODE § 11.1911 (1939), exempts all property of duly organized cemetery corporations; WASH. REV. CODE § 68.20.110 (1958), *semble;* WYO. COMP. STAT. ANN. § 38.103 (1945), private cemeteries platted and dedicated in accordance with statutory requirements.

[154] California, Connecticut, Indiana, Massachusetts, New Hampshire, Vermont, Virginia and Wisconsin. For citations, see notes 147-151, *supra.*

[155] See notes 88, 89, 102-104, *supra.*

[156] TORPEY, JUDICIAL DOCTRINES OF RELIGIOUS RIGHTS IN AMERICA, 194 (1948); Annot., 168 A.L.R. 283 (1947).

[157] Metairie Cemetery Ass'n v. Board of Assessors, 37 La. Ann. 32, 35 (1885).

[158] Mulroy v. Churchman, 60 Iowa 717, 719, 15 N.W. 583, 584 (1883), "Surely the setting apart of half an acre in the corner of a 40-acre tract, as a

poses is the expressed condition, exemption has been allowed only to those portions of a cemetery tract actually platted, maintained and employed for burial purposes,[159] or for purposes incidental and necessary thereto.[160] Actual interments, either present[161] or past,[162] appear to be necessary rather than a mere intention to use the land for burials in the future.[163] On the other hand, where exemption is granted to property "set apart," "held" or "reserved" for cemetery purposes, present non-use for interments does not defeat eligibility[164] provided the "holding" for future cemetery use is adequately evidenced by conduct consistent with bona fide intent not to abandon or divert to non-cemetery purposes.[165] A similar result obtains where exemption is conferred un-

place for the burial of the dead, cannot exempt the whole 40 from taxation." See also, State v. Ritschel, 220 Minn. 578, 20 N.W.2d 673 (1945); C. A. Wagner Construction Co. v. Sioux Falls, 71 S.D. 587, 27 N.W.2d 916 (1947).

[159] Burbridge v. Smyrna Baptist Church, 212 Ark. 924, 209 S.W.2d 685 (1948); Glen Oak Cemetery Co. v. Court of Appeals, 358 Ill. 48, 192 N.E. 673 (1934); Mount Hope Cemetery Co. v. Pleasant, 139 Kan. 417, 32 P.2d 500 (1934); Evans v. City of Jackson, 201 Miss. 14, 28 So. 2d 249 (1946). *But cf.* Petition of Gundry, 333 Mich. 700, 53 N.W.2d 586 (1952).

[160] People v. Rosehill Cemetery Co., 371 Ill. 510, 21 N.E.2d 766 (1939).

[161] See Laurel Hill Cemetery Ass'n v. San Francisco, 81 Cal. App. 2d 371, 184 P.2d 160 (1947), denying exemption to cemetery land, under "exclusive use" requirement, where all interred bodies had been exhumed and removed to another location preparatory to sale of cemetery land for subdivision purposes.

[162] Ponder v. Richardson, 213 Ark. 238, 240, 210 S.W.2d 316, 317 (1948), "The fact that no bodies have been buried in the cemetery in recent years does not militate against its existence as a public burying ground." *Accord:* Roman Catholic Episcopal Corp. v. Sault Ste. Marie, 24 Ont. L. R. 35 (1911).

[163] State v. Ritschel, *supra* note 158.

[164] Pomona Cemetery Ass'n v. Los Angeles County, 49 Cal. App. 2d 626, 122 P.2d 327 (1942); Evergreen Memorial Park Ass'n v. Evatt, 141 Ohio St. 1, 46 N.E.2d 286 (1943); People *ex rel* Woodlawn Cemetery v. Chambers, 91 N.Y.S.2d 774 (App. T., 1949); People *ex rel* Oak Hill Cemetery Ass'n v. Pratt, 129 N.Y. 68, 29 N.E. 7 (1891); Raleigh Cemetery Ass'n v. City of Raleigh, 235 N.C. 509, 70 S.E.2d 506 (1952).

[165] Memorial Hills Ass'n v. Sequoia Inv. Corp., 157 Cal. App. 2d 119, 124, 320 P.2d 567, 570 (1958), exemption denied since "the 'holding' must be active, factual and real, not merely passive, as in the instant case"; Petition of Auditor General, 294 Mich. 221, 292 N.W. 709 (1940), casual use of vacant cemetery land for vegetable gardening by indigents held not to destroy exemption since "not to be regarded as an abandonment" of cemetery objectives; National Cemetery Ass'n v. Benson, 344 Mo. 784, 129 S.W.2d 842 (1939), exemption denied to "wild and vacant" unplatted 65 acre tract of cemetery property; Laureldale Cemetery Ass'n v. Matthews, 55 Pa. D. & C. 189 (1945), *rev'd on other grounds,* 354 Pa. 239, 47 A.2d 277 (1946), exemption allowed where undeveloped portion of cemetery constituted reasonable provision for future needs; C. A. Wagner Constr. Co. v. Sioux Falls, 71 S.D. 587, 27 N.W.2d 916 (1947), exemption denied where land was never platted as cemetery lots, never used for burials, and use as a cemetery was forbidden by ordinance. To some effect under statutes exempting land "used or intended to be used" for burial grounds, see Saddle River Township v. Slavonian Catholic Church of the Assumption, 20 N.J. Misc. 92, 24 A.2d 398 (Bd. Tax App. 1942); Green Mountain Cemetery Co.'s Appeal, 7 Pa. D. & C. 200 (1925).

conditionally upon "cemeteries"[166] or "burying grounds."[167]

As with other exemption provisions, statutes relating to cemeteries are often quite non-specific as to the scope of the exemption. Less than a score of states, for example, explicitly designate tombs, mausoleums, monuments, vaults, crypts, or like structures as exempt,[168] and only a few include crematoriums.[169] Moreover, only rarely does the exempting language expressly cover personal property used in connection with a cemetery.[170] It is probable that structural additions to cemetery land normally if not invariably escape taxation along with the land. In allowing exemption to mausoleums under a statute exempting only "lands used exclusively as graveyards," the Kansas court observed that mausoleums have come into common use as places of burial for the dead, and that crypts therein are ordinarily disposed of in a manner similar to gravesites. Being places of burial, the court concluded,[171]

> Every reason that can be urged in favor of exempting graveyards from taxation can likewise be urged in favor of exempting mausoleums.

The few cases treating the question of the tax status of tangible personal property used in connection with cemeteries, however, have generally denied exemption where the statutory language speaks only in terms of realty.[172] Funds derived from cemetery operations and held in trust for future care and maintenance of cemetery property, however, have frequently been treated as part of the realty and hence exempt[173]

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[166] Mountain View Cemetery Co. v. Massey, 109 W. Va. 473, 155 S.E. 547 (1930).

[167] State v. Crystal Lake Cemetery Ass'n, 155 Minn. 187, 193 N.W. 170 (1923).

[168] District of Columbia, Florida, Iowa, Maryland, Maine, Massachusetts, Michigan, New Jersey, North Carolina, Oregon, Pennsylvania, Tennessee, Vermont and Wisconsin. For citations, see notes 147-151, *supra.*

[169] See IOWA CODE, § 427.1(3) (1958); ORE. REV. STAT. § 307.150 (1957).

[170] See CONN. GEN. STAT. § 12-81(11) (1958), "tangible property"; IND. ANN. STAT. § 64-201 (Eighth) (1951), "real and personal property"; VT. STAT. ANN. tit. 32, § 3802(7) (1959), "lands . . . trust funds and other property"; W.VA. CODE ANN. § 678(9) (Supp. 1958), "all property, real and personal"; WIS. STAT. § 70.11(13) (1955), "personal property necessary for the care and management of burial grounds."

[171] Gray v. Craig, 103 Kan. 100, 101, 172 Pac. 1004 (1918). *Accord:* Washelli Cemetery Ass'n v. King County, 158 Wash. 599, 292 Pac. 101 (1930). *Cf.* Forest Hill Cemetery Co. v. Creath, 127 Tenn. 686, 157 S.W. 412 (1913).

[172] Milford v. Worcester, 213 Mass. 162, 100 N.E. 60 (1912); State *ex rel.* Mt. Mora Cemetery Ass'n v. Casey, 210 Mo. 235, 109 S.W. 1 (1908); Rosedale Cemetery Ass'n v. Linden Township, 73 N.J.L. 421, 63 Atl. 904 (Sup.Ct. 1906); Forest Hill Cemetery Co. v. Creath, 127 Tenn. 686, 157 S.W. 412 (1913); Hollywood Cemetery Co. v. Commonwealth, 123 Va. 106, 96 S.E. 207 (1918). *Contra,* Pomona Cemetery Ass'n v. Los Angeles County, 49 Cal. App. 2d 626, 122 P.2d 327 (1942).

[173] Greenbush Cemetery Ass'n v. Van Natta, 49 Ind. App. 192, 94 N.E. 899 (1911); Collector of Taxes v. Oldfield, 219 Mass. 374, 106 N.E. 1014 (1914);

in the absence of statutory language precluding this result.[174]

A subsidiary problem to be kept in mind in connection with church cemeteries relates to the nonprofit requirements often imposed by legislatures.[175] Depending to some extent upon the manner in which they are verbally formulated, such conditions may constitute a threat to exemption even of church owned and operated burial grounds. It seems likely that such requirements are chiefly aimed at precluding tax favors for commercially owned cemetery lots which are held for the purpose of sale at a price which will return a profit on the owner's investment.[176] However, typical statutory language—"not used or held for private or corporate profit";[177] not "held by way of investment";[178] "not owned or held . . . for speculative purposes";[179] not held "with a view to profit, or for the purpose of speculating in the sale thereof"[180]—is broad enough to support denial of exemption of church owned cemetery lands.[181] In one Pennsylvania case, for example, cemetery land acquired and operated by a church as a means of producing funds for general church use was held not exempt on this ground even though the actual receipts were far less than operating expenses.[182] In addition, exemption has also been denied to nonprofit cemeteries where some of the lots were held by private persons for speculative purposes with un-

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Forest Hill Cemetery Co. v. Creath, 127 Tenn. 686, 157 S.W. 412 (1913).

[174] See Commonwealth v. Lexington Cemetery Co., 114 Ky. 165, 70 S.W. 280 (1902); Hollywood Cemetery Co. v. Commonwealth, 123 Va. 106, 96 S.E. 207 (1918).

[175] See note 149, *supra*. Even in the absence of such a requirement in the statute, a nonprofit condition may be judicially imposed. See Sunset Memorial Gardens v. Idaho State Tax Comm., 327 P.2d 766 (Idaho 1958); City of Clifton v. State Bd. of Tax Appeals, 133 N.J.L. 379, 44 A.2d 102 (Ct. E. & App. 1945). *Contra,* Mountain View Cemetery Co. v. Massey, 109 W. Va. 473, 155 S.E. 547 (1930).

[176] Some of the statutes are expressly to this effect. *E.g.,* IND. ANN. STAT. § 64-201 (Eighth) (1951); MD. ANN. CODE art. 81, § 9(5) (1957); OHIO REV. CODE § 5709.14 (1953); TEX. REV. CIV. STAT. ANN. art. 7150(3) (1951).

[177] See MONT. REV. CODES ANN. § 84-202 (1947); N.M. CONST. art. VIII, § 3.

[178] See DEL. CODE ANN. tit. 9, § 8105 (1953).

[179] See FLA. STAT. ANN. § 192.06 (1957).

[180] See OHIO REV. CODE § 5709.14 (1953); S.C. CODE § 65-1522(14) (1952).

[181] Although the majority view appears to permit exemption where the net earnings from cemetery operations are exclusively devoted to cemetery purposes and not diverted to private channels, see San Gabriel Cemetery Ass'n v. Los Angeles County, 49 Cal. App. 2d 624, 122 P.2d 330 (1942); State *ex rel.* Cunningham v. Board of Assessors, 52 La. Ann. 223, 26 So. 872 (1899); Ewing Cemetery Ass'n v. Ewing Township, 126 N.J.L. 610, 20 A.2d 607 (Sup.Ct. 1941), some courts have treated the receipt of net gain over and above costs as precluding exemption even where it was not shown that private persons would share in such "profits." See Simcoke v. Sayre, 148 Iowa 132, 126 N.W. 816 (1910); Brown's Heirs v. Pittsburgh, 1 Pa. Sup. Ct. Cas. 8, 16 Atl. 43 (1888). *Cf.* Commonwealth v. Evergreen Burial Park 176 Va. 9, 10 S.E.2d 495 (1940).

[182] Brown v. Pittsburgh, *supra* n. 180.

restricted rights of transfer.[183] In one state, moreover, a condition of exemption is that "no charge" be made for burial[184]—a requirement which many church operated burial grounds presumably could not satisfy and remain in operation.

Another requirement which may create difficulty for churches seeking exemption of their cemeteries relates to statutory language allowing exemption only if title to the cemetery is vested in specified types of entities, such as cemetery associations or corporations. Conditions of this type are found in the laws of at least five states,[185] and have been invoked to deny exemption to otherwise fully eligible cemetery property.[186] The extent to which such requirements are obstacles, of course, will depend upon the terms of state law as well as internal organizational policies of the church.

It appears that church owned and operated cemeteries may clearly obtain exemption by conforming to the statutory requirements in every state except Idaho. In this jurisdiction, as in Minnesota and New Hampshire, exemption is granted only to "public" cemeteries.[187] A recent decision of the Idaho Supreme Court casts serious doubt on the availability of exemption under such language to any privately owned burial grounds.[188] Although the case involved a cemetery corporation organized for profit and the court emphasized the private profit motive as precluding eligibility as a "public" cemetery, the opinion contains strong and deliberate language supporting as an alternative basis for decision that the word "public" contemplated ownership by a governmental or quasi-governmental entity. Moreover, since it appears to have been conceded that the cemetery in question was open for use by all members of the public on equal terms, the decision in favor of taxation squarely rejects general and nonexclusive availability as meeting the legislative

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183 Sunset Memorial Park Ass'n v. Evatt, 145 Ohio St. 194, 61 N.E.2d 207 (1945); Crown Hill Cemetery Ass'n v. Evatt, 143 Ohio St. 399, 55 N.E.2d 660 (1944).

184 NEV. REV. STAT. § 361.130 (1957).

185 See IND. ANN. STAT. § 64-201 (Eighth), nonprofit Indiana cemetery corporation; IOWA CODE § 427.1(7) (1958), cemetery associations or societies; N.Y. TAX LAW § 4(6a) (Supp. 1958), corporation or association; OKLA. STAT. tit. 8, § 7 (1951), cemetery corporations; S.D. CODE § 11.911 (1939), cemetery corporations; WIS. STAT. § 70.11(13) (1955), cemetery associations. In some states an alternative and more comprehensive exemption is available to cemeteries so organized than to noncomplying cemeteries. See ME. REV. STAT. ANN. ch. 58, § 20 (1954), incorporated cemeteries; MICH. COMP. LAWS § 456.108 (1948), rural cemetery associations; N.D. REV. CODE § 10-1011 (1943), cemetery corporations.

186 See La Fontaine Lodge v. Eviston, 71 Ind. App. 445, 123 N.E. 468 (1919); Trinity Church v. New York, 10 How. Pr. 138 (N.Y. 1854). *Cf.* State v. Township of Clinton, 49 N.J.L. 370, 8 Atl. 296 (Sup.Ct. 1887).

187 See note 151, *supra.*

188 Sunset Memorial Gardens v. Idaho State Tax Comm., ___ Idaho ___, 327 P.2d 766 (1958).

intent embraced in the adjective "public."[189]

In Minnesota, however, the opposite view has been reached, with the court stating that exemption of "public burying grounds" does not "depend on the character of the owner, but upon whether the property is in fact public burying grounds" by reason of its dedication and use by the public in general.[190] Although no authoritative judicial interpretation of the New Hampshire exemption of "public cemeteries" has been found, the Supreme Court of that state in an analogous context has declared, in dictum, that "a cemetery, though maintained by a private corporation, may fairly be deemed a public burial ground. . . ." if it is open, under reasonable regulations, to the use of the public for the burial of the dead.[191]

Church-Affiliated Schools and Colleges

Tax exemption of parochial schools as well as colleges and other educational institutions operated by or affiliated with churches is widespread, but only rarely does the statutory language explicitly refer to the religious connection as a factor in establishing eligibility.[192] In most jurisdictions, the statutes simply grant exemption to "universities," "colleges," "academies," "seminaries," "schools," and "institutions of learning",[193] or, in even broader terms, to property used for school or

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189 *Cf.* NEV. REV. STAT. § 361.130 (1957), exempting all cemeteries, public or private, which are "set apart and used for and open to the public for the burial of the dead."

190 State v. Crystal Lake Cemetery Ass'n, 155 Minn. 187, 193 N.W. 170 (1923).

191 Davie v. Rochester Cemetery Ass'n, 91 N.H. 494, 495, 23 A.2d 377, 378 (1941).

192 See CONN. GEN. STAT. § 12-81(14) (1958), "real property and its equipment owned by, or held in trust for, any religious organization and exclusively used as a school"; S.D. CODE § 57.0311(3) (1939), exemption of property of "charitable society" as defined to include organization owning or occupying a building "as part of the . . . educational program of any church"; VA. CODE ANN. § 58-12(5) (Supp. 1958), "property . . . owned by any church . . . and used or operated exclusively for . . . educational . . . purposes"; WYO. CONST. art. XV, § 12, "church schools." *Cf.* S.C. CODE § 65-1523(26) (1952), special exemption granted to Columbia Bible College. A provision formerly in WASH. REV. CODE § 84.36.050 (1955) limiting the exemption for church affiliated colleges to only one college per religious denomination was repealed by WASH. STAT. 1955, ch. 196, § 7.

193 *E.g.*, ALA. CODE tit. 51, § 2 (Supp. 1958), "schools"; ARIZ. REV. STAT. ANN. § 42-271(3) (1956), "colleges, schoolhouses"; DEL. CODE ANN. tit. 9, § 8103 (1953), "college or school"; D.C. CODE § 47-801a(j) (1951), "schools, colleges, or universities"; GA. CODE ANN. § 92-201 (Supp. 1958), "college, . . . incorporated academy or other seminary of learning"; LA. CONST. art. X, § 4, "schools and colleges"; NEV. REV. STAT. § 361.105 (1957), "nonprofit private schools"; N.H. REV. STAT. ANN. § 72:23(IV), "schools, seminaries of learning, colleges, academies and universities"; N.J. STAT. ANN. § 54:4-3.6 (Supp. 1958), "colleges, schools, academies or seminaries"; W.VA. CODE ANN. § 678(9) (Supp. 1958), "colleges, seminaries, academies and free schools."

educational purposes.[194] Other forms of expression are occasionally found.[195] Statutes of this type are consistently held to be a source of exemption for parochial schools[196] and church-affiliated institutions of higher education,[197] in the absence of other disqualifying factors. The institution in question, however, must constitute a bona fide educational entity offering as part of its regular curriculum a substantial portion of the educational training which would normally be pursued by a student enrolled at a comparative educational level in the public educational system.[198]

In a minority of states, the tax exemption statutes are neither clear nor specific as to exemptability of church educational property. In some, for example, no mention is made of educational property in the exemption law;[199] and in some of these jurisdictions other language, such as

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194 *E.g.*, IDAHO CODE ANN. § 63-105(13) (Supp. 1957), "used exclusively . . . for school or educational purposes"; IND. ANN. STAT. § 64-201 (Fifth) (1951), "used and set apart for educational . . . purposes"; MONT. REV. CODES ANN. § 84-202 (1947), "used exclusively for . . . educational purposes"; N.M. CONST. art. VIII, § 3, "used for educational purposes."

195 *E.g.*, CAL. REV & TAX CODE § 203, "educational institution of collegiate grade"; KY. CONST. § 170, "institutions of education"; MD. ANN. CODE art. 81, § 9(8) (1957), "educational or literary institutions"; MICH. COMP. LAWS § 211.7, as amended by PUB. ACTS 1958, ACT 190, p. 219, "educational . . . institutions"; MISS. CODE ANN. § 9697 (Supp. 1958), "college or institution for the education of youths"; OKLA. STAT. tit. 68, § 15.2(3) (Supp. 1957), "scientific or educational institution, college or society"; S.D. CODE § 57.0311 (1939), "educational institution".

196 Phillips County v. Sister Estelle, 42 Ark. 536 (1884); City of Wilmington v. Wilmington Monthly Meeting of Friends, 33 Del. (3 W.W. Harr.) 180, 133 Atl. 88 (1926); People *ex rel.* Pearshall v. Catholic Bishop of Chicago, 311 Ill. 11, 142 N.E. 520 (1924); Commonwealth v. Board of Educ., 166 Ky. 610, 179 S.W. 596 (1915); Nebraska Conference Ass'n v. County of Hall, 166 Neb. 588, 90 N.W.2d 50 (1958); Hennepin County v. Grace, 27 Minn. 503, 8 N.W. 761 (1881). The statutory word "schoolhouse", however, has been held to connote only publicly owned school buildings. See Indianapolis v. McLean, 8 Ind. 328 (1856).

197 People *ex rel.* Thompson v. St. Francis Xavier Female Academy, 233 Ill. 26, 84 N.E. 55 (1908); City of Louisville v. Southern Baptist Theological Seminary, 100 Ky. 506, 36 S.W. 995 (1896); Sisters of Mercy v. Town of Hookset, 93 N.H. 301, 42 A.2d 222 (1945). *Cf.* District of Columbia v. Mt. Vernon Seminary, 100 F.2d 116 (D.C. Cir. 1938).

198 See State v. Northwestern Preparatory School, 249 Minn. 552, 83 N.W.2d 242 (1957).

199 See MASS. ANN. LAWS, ch. 59, § 5 (Third), "literary, benevolent, charitable and scientific institutions"; UTAH CODE ANN. § 59-2-1 (1953), "charitable purposes." The California constitutional authorization for the "welfare exemption," CAL. CONST. art. XIII, § 1c, uses only the adjectives "religious, hospital or charitable purposes," but has been held to authorize statutory exemption of parochial schools. Lundberg v. Alameda County, 46 Cal.2d 644, 298 P.2d 1 (1956), *app. dismissed sub. nom.* Heisey v. County of Alameda, 352 U.S. 921 (1956). In Maine, express statutory provisions authorize a rebate of taxes paid by colleges, ME. REV. STAT. ANN. ch. 91-A (II H) (Supp. 1957); but there is no provision for exemption except as it may be included in exemption granted "benevolent and

an exemption of property used for "charitable" purposes, has been pressed into service as an effective substitute.[200] In still other statutes, the educational property granted exemption is described in such phrases as "public colleges,"[201] "public schools"[202] and "public institutions of learning."[203] The courts are divided as to the meaning of this kind of language, some holding that the legislative policy embodied in the adjective "public" is satisfied by a private school open to all members of the public,[204] while others maintain that it excludes from exemption all educational institutions not owned and operated by a public entity or unit of government.[205] The latter view, however, is compensated for in some states by availability of exemption to privately owned educational property under other statutory language.[206] In some states, it is doubtful whether church-affiliated schools and colleges are tax exempt at all.[207]

The specific conditions precedent to exemption of church schools vary considerably from state to state. Requirements are prevalent that the property be "used" for school or educational purposes[208] and not for

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charitable institutions." See ME. REV. STAT. ANN. ch. 91-A, § 10(II A) (Supp. 1957).

200 See Lundberg v. Alameda County, *supra* note 198; Assessors of Dover v. Dominican Fathers, 334 Mass. 530, 137 N.E.2d 225 (1956); Goeser v. Voris, 41 Pa. Co. Ct. 504 (1913).

201 See TEX. REV. CIV. STAT. ANN. art. 7150(1) (1951), "public colleges, public academies." *Cf.* GA. CODE ANN. § 92-201 (Supp. 1958), "colleges . . . academies or other seminaries of learning as are open to the general public."

202 See ARK. STAT. ANN. § 84.206 (First) (Supp. 1957), "public schoolhouses"; KAN. GEN. STAT. ANN. § 79-201 (First), "public schoolhouses"; MINN. STAT. ANN. § 272.02(2) (Supp. 1958), "public schoolhouses."

203 See ILL. ANN. STAT. ch. 120, § 500(1) (Smith-Hurd. Supp. 1958), "public educational purposes"; OHIO REV. CODE § 5709.07 (1953), "public institutions of learning."

204 See Brunswick School v. Greenwich, 88 Conn. 241, 90 Atl. 801 (1914); Willard v. Pike, 59 Vt. 202, 9 Atl. 907 (1886).

205 People *ex rel.* Pavey v. Ryan, 138 Ill. 263, 27 N.E. 1095 (1891); Henderson v. McCullogh, 89 Ky. 448, 12 S.W. 932 (1890); Gerke v. Purcell, 25 Ohio St. 229 (1874); *In re* Grace, 27 Minn. 503, 8 N.W. 761 (1881); St. Joseph's Church v. Assessors of Taxes of Providence, 12 R.I. 19 (1878).

206 See *In re* Grace, 27 Minn. 503, 8 N.W. 761 (1881), exempt as "institution of purely public charity"; Cleveland Bible College v. Board of Tax Appeals, 151 Ohio St. 258, 85 N.E.2d 284 (1949); exempt as property "used exclusively for charitable purposes"; Episcopal Academy v. Philadelphia, 150 Pa. 565, 25 Atl. 55 (1892), exempt as "purely public charity." In Ohio, the courts have insisted that the school or college be open to all members of the public in order to qualify for the charitable exemption. See American Committee of Rabbinical College of Telshe v. Board of Tax Appeals, 148 Ohio St. 654, 76 N.E.2d 719 (1947); Bloch v. Board of Tax Appeals, 144 Ohio St. 414, 59 N.E.2d 145 (1945); The Ursuline Academy of Cleveland v. Board of Tax Appeals, 141 Ohio St. 563, 49 N.E.2d 674 (1943). *Accord,* Thiel College v. Mercer County, 101 Pa. 530 (1882).

207 *E.g.,* Maine and Utah. See note 198, *supra.*

208 See note 193, *supra.*

profit.[209] Some statutes establish additional requirements in the interest of ensuring conformity to secular educational policy. Colorado, for example, grants exemption only to nonprofit private schools "requiring daily attendance, having a curriculum comparable to . . . [public schools of the same grade level] and having an enrollment of at least forty students and charging a tuition fee."[210] By way of contrast, West Virginia's school exemption is given only to "free schools."[211] In the District of Columbia, a somewhat indefinite provision demands that parochial schools, to be exempt, must "embrace the generally recognized relationship of teacher and student";[212] while Wisconsin limits its exemption to schools "offering regular courses 6 months in the year."[213]

Express limitations on the maximum area of land exempted in connection with parochial schools are occasionally stipulated by the legislature,[214] ranging from one acre in Rhode Island[215] to 640 acres in Mississippi;[216] but in the absence of such provisions, the judicially implied inclusion of adjacent land reasonably necessary to convenient use and occupation prevails nearly everywhere.[217] In view of the extensive land areas often needed to carry out educational and recreational activities sponsored by modern schools, the case law generally indicates a judicial willingness to approve exemption of substantially larger physical acreage for schools than for other exempt uses.[218] Thus, playgrounds[219] and other recreational areas,[220] in actual use in conjunction with parochial schools and seminaries are commonly accorded exemption. In con-

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[209] *E.g.*, a nonprofit requirement is included in the exemption laws cited *supra*, notes 192—94, of Alabama, Arizona, California, Delaware, District of Columbia, Georgia, Idaho, Kentucky, Louisiana, Maryland, Mississippi, Nevada, New Hampshire, New Jersey, and South Dakota.

[210] COLO. REV. STAT. ANN. § 137-12-3(7) (Supp. 1957).

[211] W.VA. CODE ANN. § 678(9) (Supp. 1958).

[212] D.C. CODE ANN. § 47-801a(j) (1951).

[213] WIS. STAT. § 70.11(4) (1955).

[214] See IND. ANN. STAT. § 64-201 (Fifth) (1951), 50 acres; IOWA CODE § 427.1(11) (1958), 160 acres in any one township; MD. ANN. CODE art. 81, § 9(8), 100 acres; MISS. CODE ANN. § 9697 (Supp. 1958), 640 acres; N.J. STAT. ANN. § 54:4-3.6 (Supp. 1958), 5 acres; R.I. GEN. LAWS ANN. § 44-3-3(5) (1956), 1 acre; WASH. REV. CODE § 84.36.050 (Supp. 1957), 100 acres.

[215] R.I. GEN. LAWS ANN. § 44-3-3(5) (1956).

[216] MISS. CODE ANN. § 9697 (Supp. 1958).

[217] See Annot., 134 A.L.R. 1176 (1941).

[218] See Horton v. Fountain Valley School, 98 Colo. 480, 56 P.2d 933 (1936); Assessors of Dover v. Dominican Fathers, 334 Mass. 530, 137 N.E.2d 225 (1956).

[219] Rettew v. St. Patrick's Roman Catholic Church, 4 Penn. 593, 58 Atl. 828 (Del. 1902); *In re* Grace, 27 Minn. 503, 8 N.W. 761 (1881).

[220] Horton v. Fountain Valley School, 98 Colo. 480, 56 P.2d 933 (1936); People *ex rel.* Pearshall v. Catholic Bishop, 311 Ill. 11, 142 N.E. 520 (1924); Monticello Female Seminary v. People, 106 Ill. 398 (1883); Assessors of Dover v. Dominican Fathers, 334 Mass. 530, 137 N.E.2d 225 (1956); People *ex rel.* Missionary Sisters v. Reilly, 85 App.Div. 71, 83 N.Y.Supp. 39 (1903). Unimproved areas not presently in use, but only intended for future development for recreational

nection with colleges located in crowded metropolitan centers, parking lots used by faculty members and employees are quite appropriately exempt as grounds reasonably necessary to accomplishment of the college's educational purposes.[221]

Although the courts generally appear to be willing to tolerate somewhat atypical collateral activities of private educational institutions as not destructive of an exemption based on "use,"[222] a notable division of opinion exists with respect to exemption of faculty residential facilities provided by the school or college. In a few states faculty housing owned by the school is expressly exempted by statute.[223] Where there is no express exempting language, the split of authorities can be attributed in large part to differences in the language of statutes relied upon to exempt such housing along with the school or college proper. Homes of faculty and administrative personnel may be held eligible with greater conviction and ease of justification where the statute grants exemption to "grounds annexed" to an educational institution and "necessary" to its occupancy and enjoyment,[224] or where it simply exempts all "buildings used as a college,"[225] than under a statute which requires property for which exemption is claimed to be "used exclusively" for exempt purposes.[226] The subtle distinctions which occasionally prevail in these matters are illustrated by two recent cases in one of which faculty residences were

purposes of school, are not exempt. People *ex rel.* Pearshall v. Catholic Bishop, *supra,* Ramsey County v. Macalester College, 51 Minn. 437, 53 N.W. 704 (1892).

[221] Church Divinity School v. County of Alameda, 152 Cal. App. 2d 496, 314 P.2d 209 (1957); District of Columbia v. George Washington Univ., 221 F.2d 87 (D.C. Cir. 1955); Webb Academy v. City of Grand Rapids, 209 Mich. 523, 177 N.W. 290 (1920).

[222] See Nebraska Conference Ass'n v. County of Hall, 166 Neb. 588, 90 N.W.2d 50 (1958), farmland operated as part of agricultural and vocational church school to supply school with produce; Monticello Female Seminary v. People, 106 Ill. 898 (1883); Application of New York Conference of Seventh-Day Adventists, 279 App.Div. 845, 109 N.Y.S.2d 774 (1952), *aff'd,* 304 N.Y. 706, 107 N.E.2d 654 (1952). *Cf.* Kemp. v. Pillar of Fire, 94 Colo. 41, 27 P.2d 1036 (1933).

[223] *E.g.,* N.C. GEN. STAT. § 105-296(4) (1958); N.Y. TAX LAW § 4(6)(K); WIS. STAT. § 70.11(4) (1955).

[224] See Meadville v. Alleghany College, 131 Pa. Super. 343, 200 Atl. 105 (1938); Ursinus College v. Collegeville, 17 Montg. Co. Rep. 61 (Pa. 1901).

[225] Elder v. Trustees of Atlanta Univ., 194 Ga. 716, 22 S.E.2d 515 (1942); Hoboken v. Division of Tax Appeals, 136 N.J.L. 328, 55 A.2d 290 (Ct. E. & App. 1947); Piscatoway Township v. State Bd. of Tax Appeals, 131 N.J.L. 158, 35 A.2d 711 (Ct. E. & App. 1944). *Cf.* Troy Conference Academy v. Poultney, 115 Vt. 480, 66 A.2d 2 (1949).

[226] See New Canaan Country School, Inc. v. Town of New Canaan, 138 Conn. 347, 84 A.2d 691 (1952); Western Reserve Academy v. Board of Tax Appeals, 153 Ohio St. 133, 91 N.E.2d 497 (1950); Smith v. Feather, 229 S.W.2d 417 (Tex. Civ. App. 1950). *Cf.* Williams College v. Williamstown Assessors, 167 Mass. 505, 46 N.E. 394 (1897). *Contra,* Bishop v. County Treasurer, 29 Colo. 143, 68 Pac. 272 (1901); Webb Academy v. Grand Rapids, 209 Mich. 523, 177 N.W. 290 (1920); State *ex rel.* Spillers v. Johnston, 214 Mo. 656, 113 S.W. 1083 (1908).

held not exempt since not "used exclusively for educational purposes,"[227] while in the other such residences were exempt as property "used exclusively for schools and colleges."[228] Yet, even where exclusive use for educational purposes is required, exemption of faculty housing is sometimes allowed where a showing is made that such residential facilities are institutionally necessary and desirable to promote overall educational objectives.[229] Probably this doctrinal explanation is simply an indirect way in which judicial recognition may be given to the practical need for low-cost faculty housing as an inducement to attract qualified teachers at subnormal salary scales.[230]

Student housing or dormitory facilities maintained by an exempt educational institution are sometimes expressly included within the terms of the exemption,[231] but are usually held to be exempt even where the statute is not explicit.[232] Especially at the level of higher education, on-campus housing for students is today an integral element in the normal educational program, as it was historically. As one court concluded after a thorough historical survey, the settled meaning of "college" is "a building or group of buildings in which scholars are housed, fed, instructed and governed under college discipline, while qualifying for their university degree."[233]

As with other exemptions, the school and college exemption provisions are often inexplicit as to scope. Some statutes contain a fairly detailed list of exempt facilities, such as the New Hampshire law[234]

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[227] New Canaan Country School, Inc. v. New Canaan, 138 Conn. 347, 84 A.2d 691 (1952).

[228] Midwest Bible & Missionary Institute v. Sestric, 364 Mo. 167, 260 S.W. 2d 25 (1953). *Accord,* Rettew v. St. Patrick's Roman Catholic Church, 4 Penn. 593, 58 Atl. 828 (Del. 1902).

[229] See Church Divinity School v. County of Alameda, 152 Cal. App. 2d 496, 314 P.2d 209 (1957); Pratt Institute v. Boyland, 174 N.Y.S. 2d 112 (App. T. 1958); Application of Thomas G. Clarkson Memorial College, 191 Misc. 621, 77 N.Y.S.2d 182 (Sup.Ct. 1948), *aff'd mem.,* 300 N.Y. 595, 89 N.E.2d 882 (1948); City of Nashville v. Ward-Belmont School, 7 Tenn. App. 610 (1928); Cassiano v. Ursuline Academy, 64 Tex. 673 (1885).

[230] See Church Divinity School v. County of Alameda, 152 Cal. App. 2d 496, 506, 314 P.2d 209, 215 (1957), indicating it is appropriate in such cases to consider "the problem of the non-availability of personnel if these living facilities were not made available. In the instant case evidence was presented that in the competitive market for good faculty it would be difficult for the appellant to obtain competent faculty members without the provision of such facilities. . . ."

[231] See KAN. GEN. STAT. ANN. § 79-208 (1949); N.H. REV. STAT. ANN. § 72:23(IV) (Supp. 1957); N.D. REV. CODE § 57-0208(6) (1943); W.VA. CODE ANN. § 678(a) (Supp. 1958).

[232] Church Divinity School v. County of Alameda, 152 Cal. App. 2d 496, 314 P.2d 209 (1957); City of Chicago v. University of Chicago, 228 Ill. 605, 81 N.E. 1138 (1907); *In re* Syracuse Univ., 214 App. Div. 375, 212 N.Y.Supp. 253 (1925).

[233] Yale Univ. v. Town of New Haven, 71 Conn. 316, 327, 42 Atl. 87, 91 (1899).

[234] N.H. REV. STAT. ANN. § 72:23(IV) (Supp. 1957).

which explicitly defines the exemption as "including but not limited to" dormitories, dining rooms, kitchens, auditoriums, classrooms, infirmaries, administrative and utility rooms, athletic fields, gymnasiums, boat houses and wharves. No other statutes contain such a complete catalogue, although several, in addition to buildings and land, enumerate such property as furniture, libraries, apparatus and equipment.[235] Many states exempt generally all parochial school property, both real and personal.[236] Only a small minority of the states appear to deny exemption to any form of personal property.[237]

Other Activities of Churches

In every jurisdiction, general statutory language exempts from taxation various types of eleemosynary property. The adjectives used to describe the object of the legislative bounty are generally very broad: "charitable,"[238] "benevolent,"[239] "beneficent."[240] Additionally, and presumably to avoid exclusionary interpretations, many statutes designate

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[235] See ARIZ. REV. STAT. ANN. § 42-271 (1956), "furniture, libraries and equipment"; CONN. GEN. STAT. § 12-81(14) (1958), "equipment"; MD. ANN. CODE art. 81, § 9 (1957), "furniture, equipment and libraries"; NEV. REV. STAT. § 361.105 (1957), "furniture and equipment"; N.J. STATS. ANN. § 54:4-3.6 (Supp. 1958), "furniture and personal property"; N.C. GEN. STAT. § 105-297 (1958), "furniture, furnishings, books and instruments"; N.D. REV. CODE § 57-0208(6), "books and furniture"; OKLA. STAT. tit. 68, § 15.2(4), "books, papers, furniture and scientific or other apparatus"; W.VA. CODE ANN. § 678(a) (Supp. 1958), "books, apparatus . . . and furniture."

[236] See ALA. CODE tit. 51, § 2 (Supp. 1958); CAL. REV. & TAX CODE § 214; COLO. REV. STAT. § 137-12-3(7) (Supp. 1957); IDAHO CODE ANN. § 63-105(13) (Supp. 1957); MICH. COMP. LAWS §§ 211.9, *as amended by* PUB. ACTS 1958, ACT 209, p. 272; MISS. CODE ANN. § 9697 (Supp. 1958); MO. ANN. STAT. § 137.100(6) (1952); MONT. REV. CODES § 84-202 (1947); NEB. REV. STAT. § 77-202 (1943); N.M. CONST. art. VIII, § 3; S.D. CODE § 57.0311(2) (1939); TENN. CODE ANN. § 67-502 (1955); VA. CODE ANN. § 58-12(5) (Supp. 1958); WIS. STAT. § 70.11(4) (1955).

[237] *Cf.* notes 234 and 235, *supra.* It should be recalled that Delaware, New York and Pennsylvania exempt all tangible personalty generally, see note 79, *supra,* and that intangibles are normally given favorable tax treatment in most states. See notes 103-105, *supra.*

[238] See, *e.g.,* ALA. CODE tit. 51, § 2 (Supp. 1958), "all property, real or personal, used exclusively for . . . purposes purely charitable"; OHIO REV. CODE § 5709.12 (1953), "real and . . . personal property belonging to institutions that is used exclusively for charitable purposes"; WYO. COMP. STAT. ANN. § 32-104 (Supp. 1957), "property used by . . . benevolent and charitable societies or associations."

[239] See, *e.g.,* KAN. GEN. STAT. ANN. § 79-201 (Third) (1949), property "used exclusively for benevolent purposes"; MICH. COMP. LAWS § 211.7 (Fourth), *as amended by* PUB. ACTS 1958, ACT 190, p. 219, property of "benevolent, charitable . . . institutions"; WIS. STAT. § 70.11(4) (1955), "property owned and used exclusively by . . . religious . . . or benevolent associations."

[240] See, *e.g.,* ILL. ANN. STAT. ch. 120, § 500(7) (Smith-Hurd Supp. 1958), "all property of beneficent and charitable organizations . . . actually and exclusively used for such charitable or beneficient [*sic*] purposes."

specific types of charitable property as exempt—for example, hospitals,[241] orphanages, asylums,[242] homes for the aged,[243] Young Men's Christian Associations,[244] reformatories,[245] poor houses,[246] and missionary societies.[247]

The range of activities which may be eligible for exemption under general statutes of this type is limited only by the outer contours of that all-embracing term, "charity,"[248] and by such specific additional statutory conditions[249] as may be applicable in particular cases. Recent ex-

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241 See, *e.g.*, CAL. REV. & TAX CODE § 214; D.C. CODE § 47-801a(i) (1951); GA. CODE ANN. § 92-201 (Supp. 1958); IDAHO CODE ANN. § 63-105(12) (Supp. 1957); MD. ANN. CODE art. 81, § 9(7) (1957); MISS. CODE ANN. § 9697(f) (Supp. 1958); MONT. REV. CODES ANN. § 84-202 (1947); N.Y. TAX LAW § 4(6a); N.D. REV. CODE, § 57-0208(8) (1943); OKLA. STAT. tit. 68, § 15.2(10) (Supp. 1957); WIS. STAT. § 70.11(4m) (Supp. 1957).

242 See, *e.g.*, CAL. CONST. art. XIII, § 1-½a, "institutions sheltering more than 20 orphan or half-orphan children receiving state aid"; CONN. GEN. STAT. § 12-81(14) (1958), property of "any religious organization . . . exclusively used as . . . an orphan asylum"; S.D. CODE § 57.0311(3) (1939), "hospital, sanitarium, orphanage, asylum, home, resort, or camp" if "used exclusively for charitable, benevolent, or religious purposes"; VT. STAT. ANN. tit. 32, §§ 3802(4), 3832 (1959), charitable "convent or school, orphanage, home or hospital"; WASH. REV. CODE § 84.36.040 (Supp. 1957), "orphanages, orphan asylums"; WYO. COMP. STAT. ANN. § 32-104 (Supp. 1957), "orphan asylums."

243 See, *e.g.*, ILL. ANN. STAT. ch. 120, § 500(7) (Smith-Hurd Supp. 1958), "all property of old people's homes"; WASH. REV. CODE § 84.36.040 (Supp. 1957), "homes for the aged and infirm." *Cf.* D.C. CODE § 47-801a(K) (1951), "The National Lutheran Home."

244 See, *e.g.*, MICH. COMP. LAWS § 211.9 (Third), *as amended by* PUB. ACTS 1958, ACT 209, p. 272; NEV. REV. STAT. § 361.110 (1957); N.C. GEN. STAT. § 105-296(5) (1958); VT. STAT. ANN. tit. 32, § 3802(6) (1959); VA. CODE ANN. § 58-12(5) (Supp. 1958). *Cf.* N.J. STAT. ANN. § 54:4-3.6 (Supp. 1958), "buildings actually and exclusively used in the work of associations and corporations organized exclusively for the moral and mental improvement of men, women and children"; TEX. REV. CIV. STAT. ANN. art. 7150(2a) (1951), *semble*.

245 See, *e.g.*, CONN. GEN. STAT. § 12-81(14) (1958), property of "any religious organization . . . exclusively used as . . . a home for children, a reformatory or an infirmary"; VA. CODE ANN., § 58-12(5) (Supp. 1958), "orphan or other asylums, reformatories"; WASH. REV. CODE § 84.26.040 (Supp. 1957), "institutions for the reformation of fallen women."

246 See, *e.g.*, ARIZ. REV. STAT. ANN. § 42-271(4) (1956), "hospitals, asylums, poor houses and other charitable institutions"; OHIO REV. CODE § 5709.13 (1953), "homes for poor children."

247 See, *e.g.*, N.Y. TAX LAW § 4(6a), "real property of a corporation or association organized exclusively for . . . religious, bible, tract, . . . missionary . . . purposes"; VA. CODE ANN. § 58-12(5) (Supp. 1958), "religious mission boards and associations." *Cf.* DEL. CODE ANN. tit. 9, § 8105 (1953), special exemption for property of "Sunday Breakfast Mission"; S.C. CODE § 65-1523 (1952), special exemptions for "Star Gospel Mission" and "Oliver Gospel Mission."

248 See Annot., 108 A.L.R. 284 (1937).

249 See notes 267, 268, 284, 285, 286, *infra*. In Illinois and New York an explicit prohibition on racial discrimination is imposed. See ILL. ANN. STAT. ch. 120, § 500(7) (Smith-Hurd Supp. 1958), "No hospital, however, which has

amples of church sponsored activities held to be eligible for exemption as "charitable" include a home for the aged,[250] seminary to train men for the priesthood,[251] home for indigent Catholic ladies,[252] summer religious study camp,[253] Bible college,[254] combined seminary and religious retreat,[255] youth recreational center,[256] salvage enterprise operated for human rehabilitation purposes,[257] Young Men's Christian Association,[258] social and religious fellowship for students,[259] nonprofit hospital[260] and home for neglected and dependent children.[261]

It is apparent that the broad terms in which most states have framed their charitable exemption provide a convenient and flexible legal orifice through which collateral activities of churches may be judicially

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been adjudicated by a court of competent jurisdiction to have denied admission to any person because of race, color or creed, shall be exempt from taxation. . . ."; N.Y. TAX LAW § 4(6j), "no education corporation or association that holds itself out to the public to be non-sectarian and exempt from taxation . . . shall deny the use of its facilities to any person otherwise qualified, by reason of his race, color or religion." The loyalty oath requirement for tax exemption, imposed by CAL. CONST. art. XX, § 19 and CAL. REV. & TAX. CODE § 32, was held unconstitutional as construed and applied. Speiser v. Randall, 357 U.S. 513, (1958); First Unitarian Church v. County of Los Angeles, 357 U.S. 545 (1958).

250 Pacific Home v. County of Los Angeles, 41 Cal. 2d 844, 264 P.2d 539 (1953); Fredericka Home for The Aged v. County of Los Angeles, 35 Cal. 2d 789, 221 P.2d 68 (1950); Solheim Lutheran Home v. County of Los Angeles, 152 Cal. App. 2d 775, 313 P.2d 185 (1957).

251 Assessors of Dover v. Dominican Fathers, 334 Mass. 530, 137 N.E.2d 225 (1956).

252 Catholic Home for Aged Ladies v. District of Columbia, 161 F.2d 901 (D.C. Cir. 1947).

253 Green Acre Baha'I Institute v. Town of Eliot, 150 Me. 350, 110 A.2d 581 (1954); Gull Lake Bible Conference Ass'n v. Township of Ross, 351 Mich. 269, 88 N.W.2d 264 (1958). See Silver Bay Ass'n for Christian Conferences & Training v. Braisted, 80 N.Y.S.2d 548 (App. T. 1920); Davis v. Camp Meeting, 57 Ohio St. 257, 49 N.E. 401 (1897).

254 Cleveland Bible College v. Board of Tax Appeals, 151 Ohio St. 258, 85 N.E.2d 284 (1949).

255 People *ex rel.* Marsters v. Rev. Saletyni Missionaries, Inc., 409 Ill. 370, 99 N.E.2d 186 (1951).

256 Christian Business Men's Committee of Minneapolis v. State of Minnesota, 228 Minn. 549, 38 N.W.2d 803 (1949). *Cf.* Assessors of Worcester v. Knights of Columbus, 329 Mass. 532, 109 N.E.2d 447 (1952), boy scout meeting room.

257 Missouri Goodwill Industries v. Gruner, 357 Mo. 647, 210 S.W.2d 38 (1948).

258 Young Men's Christian Ass'n v. County of Los Angeles, 35 Cal. 2d 760, 221 P.2d 47 (1950); Young Men's Christian Ass'n v. Sestric, 362 Mo. 551, 242 S.W.2d 497 (1951); *In re* Appeal of Young Men's Christian Ass'n of Pittsburgh, 383 Pa. 175, 117 A.2d 743 (1955).

259 Westminster Foundation v. Board of Revision of Taxes, 70 Pa. D. & C. 111 (1949).

260 Tulsa County v. St. John's Hosp., 200 Okla. 176, 191 P.2d 983 (1948).

261 Evangelical Lutheran Church v. Shawano County, 256 Wis. 196, 40 N.W.2d 590 (1949).

extruded for purposes of tax relief where the language of the church exemption itself is unavailable. In many jurisdictions, however, this charitable characterization of a religiously motivated program is unnecessary, for the church exemption may serve the purpose equally well. Where that exemption is conditioned on use for "religious purposes," for example, absence of ceremonial worship is not fatal and the benefits of the statute may be extended to property utilized for such church-sponsored purposes as a missionary rest home,[262] home for retired and superannuated officers of a religious corporation,[263] religious retreat,[264] church literature publishing establishment,[265] and foreign missionary society.[266]

Two impediments to exemption of property used for charitable or religious (*i.e.*, other than worship) purposes predominate in the case law. One relates to the commonly imposed requirement that the property be used "exclusively" for exempt purposes;[267] the other to the equally prevalent condition that the property be not used for profit.[268]

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[262] House of Rest v. County of Los Angeles, 151 Cal. App. 2d 523, 312 P.2d 392 (1957); Board of Foreign Missions v. Board of Assessors, 244 N.Y. 42, 154 N.E. 816 (1926).

[263] City of Asbury Park v. State, Division of Tax Appeals, 41 N.J. Super. 504, 125 A.2d 411 (App. Div. 1956).

[264] Serra Retreat v. County of Los Angeles, 35 Cal. 2d 755, 221 P.2d 59 (1950); Franciscan Fathers v. Town of Pittsfield, 97 N.H. 396, 89 A.2d 752 (1952).

[265] Congregational Sunday School & Publishing Soc'y v. Board of Review, 290 Ill. 108, 125 N.E. 7 (1919). See Dawn Bible Students Ass'n v. Borough of East Rutherford, 3 N.J. Super. 71, 65 A.2d 532 (App. Div. 1949); Northwestern Publishing House v. Milwaukee, 177 Wis. 401, 188 N.W. 636 (1922).

[266] People *ex rel.* Near East Foundation v. Boyland, 106 N.Y.S.2d 736 (App.T. 1951).

[267] See, *e.g.*, COLO. REV. STAT. ANN. § 137-12-3(8) (Supp. 1957), "used for strictly charitable purposes"; ILL. ANN. STAT. ch. 120, § 500(7) (Smith-Hurd Supp. 1958), "actually and exclusively used for such charitable or beneficient [sic] purposes"; OHIO REV. CODE § 5709.12 (1953), "used exclusively for charitable purposes"; ORE. REV. STAT. § 307.130 (1957), "property owned by incorporated . . . benevolent, charitable . . . institutions . . . as is actually and exclusively occupied or used in the . . . benevolent, charitable . . . work carried on by such institutions"; VA. CODE ANN. § 58-12(5) (Supp. 1958), "used or operated exclusively for . . . charitable purposes"; W.VA. CODE ANN. § 678(a) (Supp. 1958), no exemption "unless such property is used primarily and immediately for the purposes of such [charitable] corporations or organizations."

[268] These provisions range from very detailed to very succinct requirements. See, *e.g.*, ALA. CODE tit. 51, § 2 (Supp. 1958), "property . . . let for rent or hire or for use for business purposes, shall not be exempt from taxation, notwithstanding the income from such property shall be used exclusively for . . . religious or charitable purposes"; CAL. REV. & TAX. CODE § 214, exemption allowed only if "the owner is not organized or operated for profit . . . no part of the net earnings of the owner inures to the benefit of any private shareholder or individual . . . [and] the property is not used or operated . . . so as to benefit any . . . person, through the distribution of profits, payment of excessive charges or compensations or the more advantageous pursuit of their business or pro-

"Exclusive use" is a phrase which peculiarly lends itself to varying degrees of interpretation, and when coupled to such generalizations as "charitable purposes" or "religious purposes," constitutes an undisguised invitation to judicial legislation. In the broadest long-range sense, practically every program, project or undertaking of a religious organization may be assumed to be for a religious or charitable purpose; yet some immediate aspects of the operation may have all the outward aspects of a purely secular engagement. For example, free housing for underpaid or unpaid religious personnel assigned to administer and conduct an exempt activity often is deemed by the sponsoring church to be essential to a successful religious or charitable program; yet such residential facilities, which appear to be simply substitutes for other taxable private homes in use for ordinary residential purposes, do not, if viewed in terms of their immediate use, constitute part of an "exclusively" religious or charitable activity.[269] Some courts, however, have regarded the legislative policy of such statutes as focused more on ultimate "purposes" than immediate "use," and have accordingly held personnel living quarters to be exempt if incidental and necessary to effective conduct of the exempt religious,[270] charitable[271] or hospital institution.[272] The im-

fession"; DEL. CODE ANN. tit. 9, § 8103 (1953), "not held by way of investment"; D.C. CODE § 47-801a(h) (1951), "not organized or operated for private gain"; IOWA CODE § 427.1(9) (1958), "not leased or otherwise used with a view to pecuniary profit"; MD. ANN. CODE art. 81, § 9(7) (1957) "no part of the net income . . . of which inures to the benefit of any private shareholder or individual"; TENN. CODE ANN. § 67-502(2) (1955), no exemption if "any stockholder, officer, member or employee of such institution shall receive . . . any pecuniary profit from the operations of that property in competition with like property owned by others which is not exempt, except reasonable compensation for services . . . or as proper beneficiaries of its strictly . . . charitable . . . purposes."

[269] Johnson v. Mississippi Baptist Hosp., 140 Miss. 485, 106 So. 1 (1925), nurses home; Township of Teaneck v. Lutheran Bible Institute, 20 N.J. 86, 118 A.2d 809 (1955), faculty housing at Bible institute; Sisterhood of the Holy Nativity v. Tax Assessors of Newport, 73 R.I. 445, 57 A.2d 184 (1948), housing of nuns in building used for retreats, religious conferences and teaching. *Cf.* Defenders of The Christian Faith v. Horn. 174 Kan. 40, 254 P.2d 830 (1953).

[270] Serra Retreat v. County of Los Angeles, 35 Cal. 2d 755, 221 P.2d 59 (1950), priests' quarters at retreat; Silver Bay Ass'n for Christian Conferences & Training v. Braisted, 80 N.Y.S.2d 548 (App. T. 1920), employees' quarters at summer religious training camp.

[271] Fredericka Home for The Aged v. County of San Diego, 35 Cal.2d 789, 221 P.2d 68 (1950), personnel of old people's home; Girls' Friendly Soc'y v. New York, 144 Misc. 839, 258 N.Y.Supp. 945 (App.T. 1932), maid's quarters; Green Acre Baha'I Institute v. Town of Eliot, 150 Me. 350, 110 A.2d 581 (1954), lodging for staff and students at religious camp.

[272] St. Francis Memorial Hosp. v. San Francisco, 137 Cal. App. 2d 321, 290 P.2d 275 (1955), residential quarters for nurses, internes and resident physicians; Cedars of Lebanon Hosp. v. County of Los Angeles, 35 Cal. 2d 729, 221 P.2d 31 (1950), hospital staff quarters; Aultman Hosp. Ass'n v. Evatt, 140 Ohio St. 114, 42 N.E.2d 646 (1942), student nurses home; Sisters of Mercy v. Lane County, 123 Ore. 144, 261 Pac. 694 (1927), nurses' home.

pact of statutory language upon the judicial attitude, however, may materially affect the result. In a leading Ohio case,[273] for example, portions of a building used to house nuns engaged in charitable work were regarded as within an exemption of property "used exclusively for charitable *purposes*"; but the building as a whole was denied tax relief because another part, used for the residence of a priest engaged in religious work, was not within the scope of the narrower exemption accorded property "used exclusively for *public worship*."

A comparable division of authority, explainable largely in terms of whether judicial attitudes are directed primarily upon immediate uses or upon ultimate purposes, exists in connection with activities of church institutions which produce net earnings which, in turn, are utilized solely to finance the programs and activities of the church. In the absence of express statutory direction that such earnings will not preclude exemption,[274] the immediate commercial or non-exempt use is often cited as the basis for denial of relief despite the primary, and often indispensible, importance of the revenue derived therefrom in exclusive furtherance of basic religious, charitable or hospital purposes.[275] A recent decision from Idaho[276] illustrates well the judicial myopia characteristic of these cases. Despite the conceded fact that the ultimate purpose behind the operation of a wheat ranch by a church was the strictly charitable distribution of flour to indigent, aged, and needy members, the ranch used to produce the wheat from which the flour would be milled was not exempt since, in the court's opinion, the test of eligibility was the use of the property itself (*i.e.*, growing wheat) and "not the use of the proceeds, income or produce derived from the property."[277] Similarly,

[273] Mussio v. Glander, 149 Ohio St. 423, 79 N.E.2d 233 (1948). *Cf. Re* Bond Hill-Roselawn Hebrew School ,151 Ohio St. 70, 84 N.E.2d 270 (1949).

[274] See, *e.g.*, GA. CODE ANN. § 92-201 (Supp. 1958); KY. CONST. § 170; ME. REV. STAT. ANN. ch. 91-A, § 10(II C) (Supp. 1957); MASS. ANN. LAWS, ch. 59, § 5 (Third) (a) (Supp. 1958); MISS. CODE ANN. § 9697(f) (Supp. 1958); NEV. REV. STAT. § 361.140 (1957); OKLA. STAT. tit. 68, § 15.2(8) (Supp. 1957); TEX. REV. CIV. STAT. ANN. art. 7150(7) (1951).

[275] Young Men's Christian Ass'n v. County of Los Angeles, 35 Cal. 2d 760, 221 P.2d 47 (1950), barber shop, restaurant, stores, and rented office space in YMCA; Cedars of Lebanon Hosp. v. County of Los Angeles, 35 Cal. 2d 729, 221 P.2d 31 (1950), "thrift shop" operated to raise funds for children's clinic; Sunday School Bd. of the So. Baptist Convention v. McCue, 179 Kan. 1, 293 P.2d 234 (1956), Baptist book store; Christian Business Men's Committee v. State of Minnesota, 228 Minn. 549, 38 N.W.2d 803 (1949), rented office space; St. Louis Gospel Center v. Prose, 280 S.W.2d 827 (Mo. 1955), rented facilities; Lutheran Book Shop v. Bowers, 164 Ohio St. 359, 131 N.E.2d 219 (1955), church book store; Cleveland Branch of Guild of St. Barnabas for Nurses v. Board of Tax Appeals, 150 Ohio St. 484, 83 N.E.2d 229 (1948), rented apartment; New Orphans' Asylum of Colored Children v. Board of Tax Appeals, 150 Ohio St. 219, 80 N.E.2d 761 (1948).

[276] Malad Second Ward of the Church of Jesus Christ of Latter-Day Saints, 75 Idaho 162, 269 P.2d 1077 (1954).

[277] *Id.* at 164, 269 P.2d at 1079.

in denying tax exemption to the inventory of a religious book store, the Kansas court[278] recently drew a distinction between primary and secondary uses: ". . . the primary use of the property was to sell it and the secondary use was to use the gain for religious purposes," and hence it was not used "exclusively" for religious purposes.[279]

Even the courts which most emphatically deny exemption to revenue producing projects of otherwise exempt institutions do not carry the rationale of their decisions to its logical terminus. Thus, if the immediate use of the property is essentially charitable, the fact that fees are charged those able to pay in order to help defray costs does not destroy the exemption, provided the fees are not excessive in proportion to costs.[280] Here again, of course, the statutory language may play a controlling role, perhaps manifesting a legislative intent in favor of exemption despite the receipt of revenue from the use of the property[281] or, to the contrary, disclosing clear intent to deny tax relief in such cases.[282] Even where the statutes explicitly deny exemption to property which is "used for profit," however, some courts have construed the prohibition as aimed only at private gain and hence not as a preclusion of tax relief where all proceeds are used for exempt purposes.[283]

Other statutory requirements for exemption, in addition to those already mentioned, are frequently prescribed, and of course must be satisfied. Illustrative of the heterogeneity of legislative policies introduced into the general problem are the unique condition in California demanding that the exempt charitable property be "irrevocably dedicated" to exempt purposes;[284] the somewhat provincial requirement in

278 Sunday School Bd. of the Southern Baptist Convention v. McCue, 179 Kan. 1, 293 P.2d 234 (1956).

279 *Id.* at 5-6, 293 P.2d at 237.

280 See Young Men's Christian Ass'n v. County of Los Angeles, 35 Cal. 2d 760, 221 P.2d 47 (1950); Fredericka Home for the Aged v. County of San Diego, 35 Cal. 2d 789, 221 P.2d 68 (1950); Congregational Sunday School & Publishing Soc'y v. Board of Review, 290 Ill. 108, 125 N.E. 7 (1919); Green Acre Baha'I Institute v. Town of Eliot, 150 Me. 350, 110 A.2d 581 (1954); House of Good Shepherd v. Board of Equalization, 113 Neb. 489, 203 N.W. 632 (1925); St. Elizabeth Hosp. v. Lancaster County, 109 Neb. 104, 189 N.W. 981 (1922); Application of New York Conference Ass'n, 111 N.Y.S.2d 329 (Sup.Ct. 1949), *aff'd mem.*, 304 N.Y. 706, 107 N.E.2d 654 (1952); American Issue Publishing Co. v. Evatt, 137 Ohio St. 264, 28 N.E.2d 613 (1940).

281 See note 274, *supra.*

282 See Sutter Hosp. v. City of Sacramento, 39 Cal. 2d 33, 244 P.2d 390 (1952). Following this decision, the California Code was amended in an effort to avoid the same result in the future. CAL. STATS. 1953, c. 730, p. 1994. See St. Francis Memorial Hosp. v. City & County of San Francisco, 137 Cal. App. 2d 321, 290 P.2d 275 (1955).

283 See Nebraska Conference Ass'n v. County of Hall, 166 Neb. 588, 90 N.W.2d 50 (1958).

284 CAL. REV. & TAX. CODE § 214 (Deering 1953). See Pacific Home v. County of Los Angeles, 41 Cal. 2d 844, 264 P.2d 539 (1953); Goodwill Indus. v. County of Los Angeles, 117 Cal. App. 2d 19, 254 P.2d 877 (1953).

some states that the charitable uses be for the benefit primarily of residents of the state granting the exemption;[285] and the rule in some states extending exemption only to charitable organizations which are locally incorporated.[286] Compliance with conditions of this type presents chiefly a practical rather than legal problem for churches seeking exemption.

CONCLUSION

The heterogeneity of legislative sub-policies which give specificity to the generally accepted policy of church exemption illustrates the healthy diversity within unity which can exist in a federal system of government. Such diversity suggests, however, lack of agreement on clearly defined principles to govern exemption of church property, as well as differences with respect to the appropriate scope and function which exemption plays as a part of the general tax pattern.[287]

On the other hand, some of the apparent lack of uniformity appears to be in reality merely the fortuitous consequence of inadvertent differences in draftsmanship, of possibly intuitive preferences for particular phraseology based upon largely inarticulated and inadequately con-

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[285] See, *e.g.*, CONN. GEN. STAT. § 12-81(14) (1958), exempting property owned by any religious organization and used exclusively as "a Connecticut nonprofit camp or recreational facility for religious purposes"; D.C. CODE § 47-801a (h) (1951), "used for purposes of public charity principally in the District of Columbia"; ME. REV. STAT. ANN., ch. 91-A, § 10(II A) (Supp. 1957), "no such institution shall be entitled to tax exemption if it is in fact conducted or operated principally for the benefit of persons who are not residents of Maine"; OKLA. STAT. tit. 68, § 15.2(9) (Supp. 1957), "property used exclusively and directly for charitable purposes within this State." In the absence of express statutory language in point, arguments in favor of exempting only charities operating for the benefit of local residents have occasionally prevailed. See Young Life Campaign v. Board of County Comm'rs, 134 Colo. 15, 300 P.2d 535 (1956). However, the better view seems clearly to the contrary. *In re* Appeal of West Indies Mission, 180 Pa. Super. 216, 119 A.2d 550 (1956), *rev'd*, 387 Pa. 534, 128 A.2d 773 (1957). See also, People *ex rel.* Near East Foundation v. Boyland, 106 N.Y.S.2d 736, 740 (App.T. 1951), where the court rejects the local beneficiary theory, saying, "In this changing world we are realizing more and more that charity is not provincial and that we help ourselves directly and indirectly by helping mankind everywhere. . . . Charity knows no boundaries or classes. It would not be true charity if it did."

[286] See, *e.g.*, CONN. GEN. STAT. § 12-81(7) (1958); ME. REV. STAT. ANN. ch. 91-A, § 10(II) (Supp. 1957); MASS. ANN. LAWS ch. 59, § 5 (Third) (Supp. 1958); MICH. COMP. LAWS, § 211.7 (Fourth), *as amended by* PUB. ACTS 1958, ACT 190, p. 219; WIS. STAT. § 70.11(11) (1955). *Cf.* Methodist Book Concern v. Galloway, 186 Ore. 585, 208 P.2d 319 (1949).

[287] See PFEFFER, CHURCH, STATE, AND FREEDOM 183 (1953); Killough, *Exemptions to Educational, Philanthropic and Religious Organizations,* in TAX POLICY LEAGUE, TAX EXEMPTIONS 23 (1939); Mowry, *Ought Church Property to be Taxed?* 15 GREEN BAY 414 (1903); Paulsen, *Preferment of Religious Institutions in Tax and Labor Legislation,* 14 LAW & CONTEMP. PROB. 144 (1949); Note, *Real Property Tax Exemption of Churches,* 29 ST. JOHN'S L. REV. 121 (1954).

sidered premises.[288] Although empirical evidence may not be readily available to support this proposition, one at least wonders whether the differences in exemptability under a statute which predicates exemption upon "religious worship" as compared with one demanding only "religious purposes," or a statute basing exemption upon ownership as compared with one insisting on "use" for specified purposes, are in all instances the result of deliberately preconceived policy. At any rate, the obvious differences which do exist seem clearly to invite an intelligent reconsideration of church exemption policies, in the light of overall tax and exemption considerations.

Much of the legal literature relating to tax exemptions stresses, as the most significant feature of the extensive litigation relating thereto, the dichotomy between strict and liberal interpretation.[289] The cases themselves, however, strongly suggest that the specific statutory language in which the exemption is formulated has had a far greater influence upon decision than theoretical doctrines of interpretation.[290] This is not to deny that judicial predispositions have not had their influence; but it is to suggest that such influence has served primarily to tip the scales where the statutory language is not rather clearly pointed in one direction or another. It further suggests that a good deal of unnecessary litigation may have resulted from the reliance of attorneys on decisional law, including cases from other jurisdictions controlled by distinguishable statutory language, rather than upon a hardheaded appraisal of the potential scope and probabilities of judicial discretion to legislate in the interstices of the controlling statutory language in the particular jurisdiction. In this sense, church tax litigation constitutes a valuable lesson in the dangers of being too "case-minded."

The prolific litigation further points to the rather unsatisfactory nature of most of the constitutional and statutory language relating to the church exemption—language which due to its imprecision and overly

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288 See Note, *Exemption of Educational, Philanthropic and Religious Institutions From State Real Property Taxes,* 64 HARV. L. REV. 288 (1950).

289 See TORPEY, JUDICIAL DOCTRINES OF RELIGIOUS RIGHTS IN AMERICA 175-76 (1948); ZOLLMAN, AMERICAN LAW OF CHARITIES § 460 (1924); Zollman, *Tax Exemptions of American Church Property,* 14 MICH. L. REV. 646, 653 (1916); Notes, *Exemption of Property Owned and Used by Religious Organizations,* 11 MINN. L. REV. 541 (1927); *Judicial Restoration of the General Property Tax Base,* 44 YALE L. J. 1075 (1935).

290 See Cedars of Lebanon Hosp. v. County of Los Angeles, 35 Cal.2d 729, 735, 221 P.2d 31, 35 (1950), ". . . the rule of strict construction does not require that the narrowest possible meaning be given to words descriptive of the exemption, for a fair and reasonable interpretation must be made of all laws, with due regard for the ordinary acceptation of the language employed and the object sought to be accomplished thereby"; State *ex rel* Spillers v. Johnston, 214 Mo. 656, 663, 113 S.W. 1083, 1084 (1908), ". . . . strict construction must still be a reasonable construction". *Cf.* 2 COOLEY, TAXATION § 674 (4th ed. 1924); Note, *Judicial Restoration of The General Property Tax Base,* 44 YALE L. J. 1075 (1935).

broad terminology, constitutes a veritable invitation to aggressive and conscientious tax officers to resolve any doubts against exemptions.[291] As one of our wisest judges has pointed out in a different context, the interpretation of statutory language by a public officer charged with the enforcement of law is frequently different from that of the judge who must decide the dispute:

> If there is a fair doubt, his duty is to present the case for the side which he represents, and leave decision to the court, or the administrative tribunal, upon which lies the responsibility of decision. If he surrenders a plausible construction, it will, at least it may, be surrendered forever; and yet it may be right.[292]

Since a substantial preponderance—indeed nearly all—of the great volume of litigation relating to church exemptions has represented an effort to obtain judicial reversal of adverse determinations by taxing officers, the responsibility in part may be attributed to the inadequacy of legislative draftsmanship. Legislative "buck-passing"—"Let's pass the bill even if we don't understand it, because the courts will make clear what we meant"—is, of course, not uncommon;[293] but in the tax exemption field it may have a particularly vicious impact. Vagueness of exemption language, coupled with the institutional dynamics of the assessor's position, tends, by inviting litigation, to impose a practical tax discrimination upon those churches which are most in need of financial assistance and least able to afford the costs, financial and otherwise, of such litigation.

Another feature of the church exemption pattern, with respect to which little has been said,[294] relates to the influence which tax exemptions may exert in motivating or perhaps even controlling decisions of church policy. The array of special conditions which statutes frequently impose upon the availability of exemption may impose realistic barriers to freedom of action. For example, statutory emphasis upon "use" for exempt purposes, although perhaps without any conscious legislative intent to reach that result, has frequently resulted in denial of exemption

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291 *Cf.* 3 STOKES, CHURCH AND STATE IN THE UNITED STATES 424-26 (1950), recounting the experience of the District of Columbia Commissioners who in 1942 undertook a strict enforcement policy with respect to church tax exemptions, only to be met by Congressional legislation which "virtually reestablished tax exemption of church properties on the basis which had existed" under the more lax policy prior thereto. See also, DVORIN AND JAMISON, TAX EXEMPTIONS AND LOCAL SELF GOVERNMENT 41-42 (1958).

292 Fishgold v. Sullivan Dry Dock & Repair Corp., 154 F.2d 785, 789 (2nd Cir. 1946), per Learned Hand.

293 See Aigler, *Legislation in Vague and General Terms,* 21 MICH. L. REV. 831 (1923); Freund, *The Use of Indefinite Terms in Statutes,* 30 YALE L. J. 437 (1921). *Cf.* READ AND MACDONALD, CASES AND MATERIALS ON LEGISLATION 972-1299 (1948).

294 *Cf.* BROWN, CHURCH AND STATE IN CONTEMPORARY AMERICA 161 (1936);

to church buildings under construction.[295] Paradoxically, such denial normally occurs at the very time when the church organization is usually in most dire need of financial support, at the very time when the fundamental considerations justifying tax exemption are at their strongest. Similarly, statutory emphasis upon "exclusive" use for exempt purposes has justified denial of exemption despite the fact that the disqualifying activity was a customary one and possibly even was regarded by the officers of the church in question as highly essential to the effective promotion of its religious objectives.[296] An "exclusive use" requirement may thus tend to stifle expansion of the role and functions of the church, at least where financing is difficult, and may tend to confine religious programs within a preconceived stereotypical pattern which may be completely anachronistic to the modern conception of the church in our society.[297] Statutory language insisting upon "nonprofit" operations of property, together with judicial insistence that such language precludes exemption of any property from which net revenues are derived even though such revenues are devoted exclusively to religious or charitable objectives,[298] may well exert an influence upon the curtailment of collateral activities of church groups aimed at production of revenue. Yet it seems clear that the effectiveness of many forms of church functions as modernly conceived, such as youth programs, recreational activities, outdoor camping, youth fellowships, dances and other social activities, depend upon adequate financing often beyond the capacity of the membership of the congregation when limited to voluntary donation techniques. The impact of tax exemptions upon church policies is a matter which appears to deserve study.

Despite differences of emphasis, shortcomings of statutory language and unnecessarily voluminous litigation, it is evident that the policy of exempting church property from taxation is firmly rooted in American law. Indeed, during the past decade or so, in the face of increasing concern as to the need for tapping new sources of tax revenue to meet the ever increasing costs of governmental services together with the institution of new ones,[299] the church exemption laws, like other ex-

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PFEFFER, CHURCH, STATE, AND FREEDOM 187 (1953); RIAN, CHRISTIANITY AND AMERICAN EDUCATION 1326-27 (1949).

295 See, *e.g.*, First Baptist Church v. County of Los Angeles, 113 Cal. App. 2d 392, 248 P.2d 101 (1952); Annot., 108 A.L.R. 284 (1937). *But cf.* Application of Ohave Scholem Congregation, 156 Ohio St. 183, 101 N.E.2d 767 (1951).

296 See *e.g.*, Society of the Precious Blood, 149 Ohio St. 62, 77 N.E.2d 459 (1948); Mussio v. Glander, 140 Ohio St. 423, 79 N.E.2d 233 (1948).

297 See SWEET, THE STORY OF RELIGION IN AMERICA, *passim* (1950).

298 See notes 267, 275, *supra.*

299 See DVORIN AND JAMISON, TAX EXEMPTIONS AND LOCAL SELF GOVERNMENT (1958); Newcomer, *The Growth of Property Tax Exemptions,* 6 NAT'L. TAX J. 116 (1953); Stimson, *Exemption of Property From Taxation,* 18 MINN. L. REV. 411 (1934); Tax Institute, *Trends in Real Estate Exemptions,* 12 TAX POLICY 3 (Dec. 1945); Todd, *Tax Exemption and Tax Delinquency,* 12 TAX MAG. 159 (1934).

emption laws, have been frequently expanded by legislative action.[300] Popularly organized attempts to stem the tide have equally consistently failed.[301] The growing strength of church exemptions thus documents the view that, as one of "those incidental advantages that religious bodies, or other groups similarly situated, obtain as a byproduct of organized society,"[302] tax exemption for churches constitutes one of the most significant ways by which the state "follows the best of our traditions. For it then respects the religious nature of our people and accommodates the public service to their spiritual needs."[303]

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300 See ALA. ACTS 1951, ACT 953 at 1627, increasing hospital exemption from $25,000 to $75,000; CAL. STAT. 1957, ch. 214 at 876, enacting exemption for church parking lots; COLO. SESS. LAWS 1957, ch. 267 at 804, increasing parsonage exemption from $3000 to $6000; GA. LAWS 1955, ACT 124 at 262, enacting parsonage exemption; MASS. ACTS 1953, ch. 231 at 171, increasing parsonage exemption from $5,000 to $10,000; MASS. ACTS 1957, ch. 500 at 423, authorizing exemption of charitable trusts and of property occupied by charitable organization other than owner; MICH. PUB. ACTS 1958, ACT 190 at 219, exempting nonprofit hospitals; VA. ACTS 1956 REG. SESS., ch. 478 at 693, exempting, *inter alia,* missionary societies and parochial schools; WASH. LAWS 1955, ch. 196 at 821, repealing limitation of college exemption to one denominational college per religious denomination; WIS. LAWS 1957, ch. 149 at 169, exempting nonprofit hospitals.

301 The California parochial school exemption, enacted by CAL. STAT. 1951, ch. 242, p. 502, survived both a referendum vote in 1952 and an attempt at repeal by initiative measure in 1958, as well as taxpayer's suit. See KLEPS, PROPOSED AMENDMENTS TO CONSTITUTION, CALIFORNIA GENERAL ELECTION, TUESDAY, NOV. 4, 1958, 21 (1958); Lundberg v. County of Alameda, 46 Cal. 2d 644, 298 P.2d 1 (1956), *app. dism'd,* 352 U.S. 921 (1956).

302 In McCollum v. Board of Educ., 333 U.S. 203, 249 (1948), Reed, J., dissenting. See O'BRIEN, JUSTICE REED AND THE FIRST AMENDMENT (1957).

303 Zorach v. Clauson, 343 U.S. 306, 314 (1952), per Douglas, J.